

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.D., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVAL SHIPYARD, Portsmouth, VA**

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**Docket No. 22-1111  
Issued: December 9, 2022**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 11, 2022 appellant filed a timely appeal from a May 3, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,373.82 for the period July 3 through August 13, 2021 for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement

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<sup>1</sup> The Board notes that, following the May 3, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

benefits and FECA wage-loss compensation, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On March 29, 2021 appellant, then a 67-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 2021 he contracted COVID-19 while in the performance of duty. He stopped work on March 19, 2021. OWCP accepted the claim for COVID-19. It paid wage-loss compensation on the supplemental rolls beginning July 3, 2021.

On August 4, 2021 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits form. It requested appellant's SSA age-related retirement benefit rates with and without FERS offset as of February 19, 2021.

On August 31, 2021 OWCP received the completed dual benefits form, wherein SSA reported SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning February 2021, the SSA rate with FERS was \$1,899.60 and without FERS was \$907.40.

In a notice dated September 14, 2021, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that the SSA had confirmed that a portion of his SSA age-related retirement benefits were attributed to his years of federal service as an employee under the FERS retirement program and that portion required an offset of his FECA compensation benefits in the amount of \$915.88 every 28 days. OWCP advised that, to account for his SSA offset, appellant's FECA wage-loss compensation would be adjusted to reflect a new net compensation amount effective August 14, 2021.

On November 23, 2021 OWCP issued a preliminary overpayment determination notifying appellant that he had received an overpayment of compensation in the amount of \$1,373.82 for the period July 3 through August 13, 2021 because the SSA/FERS offset was not applied to payments for this period. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method, and advised him that he could request a waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. It provided an overpayment action request form and further notified him that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence, or a precoupment hearing.

In an e-mail dated November 30, 2021, appellant requested waiver of recovery of the overpayment as repayment of the overpayment would result in financial hardship. He did not provide any additional information or documents.

Appellant retired from the employing establishment, effective December 31, 2021. He elected to receive Office of Personnel Management retirement benefits, effective May 1, 2022.

In a FERS Offset calculation worksheet dated May 3, 2022, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total

overpayment in the amount of \$1,373.82. It found that, during the period July 3 through August 31, 2021, appellant received an overpayment in the amount of \$1,373.82.

By decision dated May 3, 2022, OWCP finalized the November 23, 2021 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$1,373.82 because it had failed to offset his compensation payments for the period July 3 through August 13, 2021 by the portion of his SSA benefits that were attributable to federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>3</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related benefits that are attributable to federal service of the employee.<sup>5</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,373.82 for the period July 3 through August 31, 2021 for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *D.S.*, Docket No. 22-0441 (issued September 30, 2022); *E.R.*, Docket No. 21-0133 (issued November 15, 2021); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>7</sup> *Id.*; *see D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service from July 3 through August 31, 2021. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS during the specific period July 3 through August 31, 2021. OWCP provided its calculation for the relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 3 through August 31, 2021 and finds that an overpayment in the amount of \$1,373.82 has been established.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>8</sup> Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>10</sup> Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP, but failed to do so.<sup>11</sup>

In its preliminary overpayment determination dated November 23, 2021, OWCP explained the importance of providing the completed overpayment recovery questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. It advised appellant

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<sup>8</sup> 5 U.S.C. § 8129.

<sup>9</sup> 20 C.F.R. § 10.438.

<sup>10</sup> *Id.* at § 10.436.

<sup>11</sup> *Id.*; *see P.A.*, Docket No. 22-0801 (issued October 28, 2022).

that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit sufficient financial documentation necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. He did not complete a Form OWCP-20 outlining his income, assets, and expenses. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>12</sup>

Consequently, the Board finds that OWCP properly denied waiver of recovery of the overpayment in the May 3, 2022 decision.<sup>13</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,373.82 for the period July 3 through August 31, 2021, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of this overpayment.<sup>14</sup>

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<sup>12</sup> See *C.L.*, Docket No. 22-0349 (issued August 30, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>13</sup> See *C.L.*, *id.*; *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>14</sup> The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. 20 C.F.R. § 10.441; see *A.S.*, Docket No. 22-0281 (issued September 26, 2022); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board