

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

S.R., Appellant)	
)	
and)	Docket No. 20-0818
)	Issued: June 28, 2022
U.S. POSTAL SERVICE, DOWNTOWN)	
STATION, Colorado Springs, CO, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2020 appellant filed a timely appeal from January 23 and February 6, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$ 12,976.41 for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence before OWCP following the February 6, 2020 decision and on appeal. 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.*

FECA wage-loss compensation for the period February 1, 2016 through April 27, 2019, without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$ 300.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On March 7, 1992 appellant, then a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress disorder due to factors of his federal employment, including ongoing stress related to a March 5, 1992 altercation with a supervisor. On April 15, 1992 OWCP accepted his claim for contusion and left shoulder sprain. Appellant stopped work on May 5, 1992 and retired effective May 3, 1993. On February 9, 1994 OWCP expanded the acceptance of appellant's claim to include aggravation of major depressive disorder.

On May 19, 1994 appellant elected to receive FECA benefits rather than Office of Personnel Management (OPM) retirement benefits, with an effective date of May 3, 1993.

In an August 17, 1994 letter, OWCP authorized payment of wage-loss compensation for total disability on the periodic rolls effective August 6, 1994. On February 2, 1995 it authorized payment of wage-loss compensation for total disability on the periodic rolls, effective January 22, 1995.

On February 1, 2012 OWCP notified appellant that FECA required that his continuing compensation benefits be reduced if he began receiving SSA age-related retirement benefits based on his age and federal service. It further noted that failure to report receipt of such retirement benefits to OWCP could result in an overpayment of compensation. OWCP directed appellant to contact it immediately if he was receiving or had been approved to receive SSA age-related retirement benefits.

On April 17, 2019 OWCP received from SSA a completed Federal Employees Retirement System (FERS)/SSA dual benefit calculation form, which reported that appellant had been in receipt of age-related SSA benefits since February 1, 2016. Beginning February 2016, appellant's monthly SSA rate with FERS was \$1,261.80 and without FERS was \$933.50. Beginning December 2016, appellant's monthly SSA rate with FERS was \$1,265.50, and without FERS was \$936.30. Beginning December 2017, appellant's monthly SSA rate with FERS was \$1,290.80, and without FERS was \$955.00. Beginning December 2018, appellant's monthly SSA rate with FERS was \$1,326.90, and without FERS was \$981.70.

In a May 16, 2019 letter, OWCP informed appellant that he had been receiving dual FERS and SSA benefits. It further informed him that his FECA benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service. OWCP indicated that appellant's FECA benefits would be reduced by \$345.20 to \$2,383.87 every 28 days.

On May 20, 2019 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$ 13,181.25 because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement

benefits for the period February 1, 2016 through May 15, 2019. It noted that SSA had confirmed that a portion of his SSA age-related retirement benefits were attributed to his federal service as an employee, which required an offset of his FECA compensation benefits through May 15, 2019 when his monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset overpayment calculation worksheet indicated that OWCP had utilized a 28-day FERS offset amount of \$303.05 for the period February 1 through November 30, 2016, \$303.88 for the period December 1, 2016 through November 20, 2017, \$309.97 for the period December 1, 2017 through November 30, 2018, and \$318.65 for the period December 1, 2018 through May 15, 2019. Using these figures, OWCP calculated that the total overpayment amount was \$13,181.25. It found appellant without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecoupment hearing.

On May 29, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and further requested waiver of recovery of the overpayment.

Following a preliminary review, by decision dated July 12, 2019, OWCP's hearing representative set aside the May 20, 2019 preliminary overpayment determination, finding that OWCP improperly calculated the period of the overpayment. He found that, effective April 28, 2019, rather than May 15, 2019, it began to offset appellant's periodic rolls payments by the amount of his SSA benefits attributable to his federal employment under FERS. OWCP's hearing representative further directed OWCP to perform a proper analysis of the fault issue.

On July 23, 2019 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$12,976.41 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2016 through April 27, 2019. It noted that the SSA had confirmed that a portion of his SSA 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 until April 27, 2019 when his monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA age-related retirement benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset overpayment calculation worksheet indicated that OWCP had utilized a 28-day FERS offset amount of \$303.05 for the period February 1 through November 30, 2016; \$303.88 for the period December 1, 2016 through November 20, 2017; \$309.97 for the period December 1, 2017 through November 30, 2018; and \$318.65 for the period December 1, 2018 through April 27, 2019. OWCP found that appellant was at fault in the creation of the overpayment. It requested that he complete an enclosed Form OWCP-20 and submit supporting financial documentation. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecoupment hearing.

On July 29, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and alleged that the overpayment occurred through no fault of his own and that he was entitled to waiver of recovery of the overpayment.

Appellant testified before an OWCP hearing representative on November 12, 2019. He asserted that he had consistently notified OWCP of his SSA benefits. Appellant also testified that he believed that he was receiving the appropriate amount of FECA compensation.

Appellant provided an unsigned Form OWCP-20 on November 26, 2019, which listed his monthly income as \$1,226.00 in SSA benefits, \$2,383.87 in FECA benefits, and \$1,215.86 in Department of Veterans Affairs (VA) benefits and found he had a total monthly income of \$4,848.56.³ He listed his monthly expenses as housing of \$1,263.25, food \$600.00, and clothing \$100.00. Appellant indicated that his car payments were \$127.25 per month, with insurance of \$161.37 per month, and car tax of \$79.82 and \$213.58 per year or \$24.45 per month. He listed his monthly utilities as \$160.00 for electricity, \$150.00 for fuel, and \$216.00 for his telephones, \$149.85 for cable television, and renters insurance of \$22.80. Appellant also reported eight credit cards with minimal monthly payments of \$473.00, \$361.00, \$355.00, \$127.46, \$80.00, \$42.00, and \$26.00. He indicated monthly life insurance of \$9.95. Appellant provided financial documents supporting his expenses.

By decision dated January 23, 2020, OWCP's hearing representative found that appellant had received an overpayment of compensation in the amount of \$12,976.41 for the period February 1, 2016 through April 27, 2019. She determined that he was without fault in the creation of the overpayment. OWCP's hearing representative then reviewed appellant's Form OWCP-20 and determined that his monthly income was based on \$1,226.00 in SSA benefits, \$1,215.86 in VA benefits, and \$2,577.00 in FECA benefits. She found that he had provided documentation to establish \$4,530.34 in expenses and allotted an additional \$60.00 for miscellaneous expenses. OWCP's hearing representative found appellant's monthly income of \$5,018.86 exceeded his monthly expenses of \$4,590.34 by more than \$50.00. She further found that recovery would not be against equity and good conscience. OWCP's hearing representative noted that appellant continued to receive wage-loss compensation on the periodic rolls every 28 days in the amount \$2,378.77 and directed OWCP to recover the overpayment by withholding \$300.00 from his ongoing compensation benefits every 28 days.

By decision dated February 6, 2020, OWCP issued a final overpayment decision, which determined that appellant received an overpayment of compensation in the amount of \$12,976.41 for the period February 1, 2016 through April 27, 2019 for which he was without fault. It denied waiver of recovery and required recovery of the overpayment by deducting \$300.00 from his continuing compensation payments every 28 days beginning March 1, 2020.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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

³ The Board notes that these figures total \$4,825.73.

performance of his or her duty.⁴ 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.⁵

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to the employee's federal service.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,976.41 for the period February 1, 2016 through April 27, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its February 6, 2020 decision, OWCP found that an overpayment of compensation was created for the period February 1, 2016 through April 27, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to federal service during the period February 1, 2016 through April 27, 2019.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of age-related SSA retirement benefits that were attributable to federal service. SSA provided their age-related retirement benefit rates with FERS, and without FERS for the period February 1, 2016 through April 27, 2019. OWCP calculated the amount of overpayment for each relevant period based on a FERS offset overpayment calculation worksheet.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

The Board has reviewed the benefits received by appellant for the period February 1, 2016 through April 27, 2019 and finds that an overpayment of compensation in the amount of \$12,976.41 was created.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹¹

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴

OWCP regulations provide 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. The information is also used to

⁹ *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2018).

¹³ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹⁴ 20 C.F.R. § 10.437(a)(b).

determine the repayment schedule, if necessary.¹⁵ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁶

OWCP procedures provide that a finding that a type of expense is ordinary and necessary does not mean that the amount is ordinary and necessary. The burden is on the overpaid individual to show that the expenses are reasonable and needed for a legitimate purpose. If the claims examiner or hearing representative determines that the amount of certain expenses is not ordinary and necessary, he or she must state, in writing, the reasons for the determination. The determination should be supported by rationale, which may include utilizing statistics from the Bureau of Labor Statistics that show that the overpaid individual's expenses exceed that of the range for the general population. OWCP should be careful to avoid counting an expense twice when totaling the overpaid individual's ordinary and necessary living expenses. For example, if the overpaid individual's credit card debt is already calculated as a fixed and miscellaneous living expense, the credit card expense(s) should not be added again as consumer debt expense. If the amount is added again, it would result in an excessive total for the overpaid individual's ordinary and necessary living expenses, and would make the individual appear less able to repay his or her overpayment than would actually be the case. Furthermore, OWCP should ensure that the monthly expense used for each credit card reflects only the minimum payment required by the creditor. The minimum amount should be verified, if necessary, by requiring the overpaid individual to submit copies of his or her monthly billing statement(s).¹⁷

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 of recovery of the overpayment 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.¹⁸ OWCP considered appellant's financial information, as reported, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet ordinary and necessary living expenses. Based on his Form OWCP-20 and the record, his total monthly income of \$5,018.86 and subtracting \$4,590.34 in monthly debts, resulted in approximately \$428.00 in income over debt each month. Thus, based on appellant's statements and the record, appellant's monthly income exceeded his ordinary and

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b).

¹⁷ *Supra* note 12 at Chapter 6.400.4(b)(2).

¹⁸ 20 C.F.R. § 10.436.

necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses such that recovery would defeat the purpose of FECA.¹⁹

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed her position for the worst. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁰

As such, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$300.00, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²³ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$300.00 every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$12,976.41 for the period February 1, 2016 through April 27, 2019 for which he was without fault,

¹⁹ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

²⁰ *N.J.*, *supra* note 13; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

²¹ *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

²² 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 10; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²³ *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$300.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the January 23 and February 6, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 28, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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