

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 16, 2015 appellant, then a 64-year-old housekeeper, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2015 he sustained a back injury while in the performance of duty. He stopped work on September 17, 2015. In an incident report, appellant indicated that on September 16, 2015 he experienced back pain when he bent down to place a dust mop head on a dust mop stick. The claim form indicated that appellant was under the Federal Employees Retirement System (FERS). On January 5, 2016 OWCP accepted appellant's claim for lumbar spine sprain. It paid him wage-loss compensation on the supplemental rolls beginning November 1, 2015.

On January 12, 2016 appellant accepted a full-time, modified-duty position.

By decision dated March 18, 2016, OWCP expanded the acceptance of appellant's claim to include lumbar intervertebral disc displacement at L2-3. It paid him wage-loss compensation for loss of Saturday, Sunday, or holiday premium pay and placed him on the periodic rolls, effective May 27, 2018.

On March 12, 2021 OWCP provided SSA with a FERS/SSA dual benefits form. It listed the computation period as September 16, 2015 to the present.

On March 24, 2021 SSA provided OWCP with a completed dual benefits form, which listed appellant's monthly SSA age-related retirement benefit rates, beginning January 2016, with and without appellant's FERS contributions. The form indicated that: beginning January 2016, the SSA rate with FERS was \$1,137.70 and without FERS was \$926.50; beginning December 2016, the SSA rate with FERS was \$1,141.00 and without FERS was \$929.20; beginning January 2017, the SSA rate with FERS was \$1,245.10 and without FERS was \$929.20; beginning December 2017, the SSA rate with FERS was \$1,270.00 and without FERS was \$947.80; beginning January 2018, the SSA rate with FERS \$1,305.60 and without FERS was \$947.80; beginning December 2018, the SSA rate with FERS was \$1,342.10 and without FERS was \$974.30; beginning January 2019, the SSA rate with FERS was \$1,370.70 and without FERS was \$974.30; beginning December 2019, the SSA rate with FERS was \$1,392.60 and without FERS was \$989.80; beginning January 2020, the SSA rate with FERS was \$1,421.80 and without FERS was \$989.80; and beginning December 2020, the SSA rate with FERS was \$1,440.20 and without FERS was \$1,002.60.

OWCP completed a FERS offset overpayment calculation worksheet on June 7, 2021. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period between January 1, 2016 through May 22, 2021, resulting in a total overpayment of \$22,715.37. The form indicated that: from January 1 through November 30, 2016, appellant received an overpayment in the amount of \$2,332.48; from December 1 through 31, 2016, appellant received an overpayment in the amount of \$216.45; from January 1 through November 30, 2017, appellant received an overpayment in the amount of \$3,478.37; from December 1 through 31, 2017, appellant received an overpayment in the amount of \$329.28; from January 1 through November 30, 2018, appellant received an overpayment in the amount of \$3,939.73; from December 1 through 31, 2018, appellant received an overpayment in the amount of \$375.88; from January 1 through November 30, 2019, appellant received an

overpayment in the amount of \$4,364.76; from December 1 through 31, 2019, appellant received an overpayment in the amount of \$411.65; from January 1 through November 30, 2020, appellant received an overpayment in the amount of \$4,770.99; and from December 1, 2020 through May 22, 2021, appellant received an overpayment in the amount of \$2,495.76.

On August 2, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$22,715.37 had been created because it had failed to reduce appellant's wage-loss compensation benefits by the portion of his SSA age-related retirement benefits that were attributable to federal service for the period January 1, 2016 through May 22, 2021. It further advised him of its preliminary determination 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 repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP further provided an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoument hearing.

On September 20, 2021 appellant requested that OWCP make a decision based on the written evidence. He also requested a waiver of recovery of the overpayment because he was found to be without fault in the creation of the overpayment. Appellant explained that he did not know that payments were supposed to be withheld due to his SSA benefits.

Appellant also submitted a completed Form OWCP-20 dated September 7, 2021. He reported his total monthly income, monthly expenses, and monthly payments. Appellant also noted the balance of his checking and savings accounts and value of other personal property and funds. He submitted monthly utility, cable, cellular, and insurance bills and credit card and bank statements.

By decision dated September 29, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$19,514.41 for the period January 1, 2016 through May 22, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It noted that appellant received wage-loss compensation at an incorrect payrate for the period June 23, 2019 through May 22, 2021. OWCP found that it had incorrectly paid appellant compensation at the "2/3 without dependents rate" when he should have been paid at the "3/4 with dependents rate on account of [his] full-time student adult daughter." As a consequence, it explained that it had "adjusted" the final overpayment amount from \$22,715.37 to \$19,514.41. OWCP also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment.

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

performance of his or her duty.² 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.³

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 retirement benefits that are attributable to the employee's federal service.⁴ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefits 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for which he was without fault, for the period January 1, 2016 through May 22, 2021, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

As noted, a claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶ In this case, OWCP was notified by SSA in a form received by OWCP on March 24, 2021 that appellant had concurrently received FECA benefits and SSA age-related retirement benefits attributable to his federal service without a proper offset beginning January 1, 2016. The Board finds that fact of overpayment is, therefore, established.

The Board further finds, however, that the case is not in posture for decision with respect to the amount of the overpayment.

OWCP found that appellant received an overpayment of compensation in the amount \$19,514.41 for the period January 1, 2016 through May 22, 2021. However, it arrived at that amount by offsetting the compensation owed to appellant as OWCP incorrectly paid him at the 2/3 payrate without dependents instead of the 3/4 payrate with dependents.

Although such an offset appears administratively straightforward, the Board has held that it may circumvent established legal procedures and protections if the claimant is entitled to consideration of waiver.⁷ Such offsets are not allowed, as they permit an unrestricted recovery of

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *Id.* *See also A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *See J.K.*, Docket No. 20-1545 (issued July 27, 2021); *see also P.S.*, Docket No. 18-1438 (issued February 1, 2019).

the offset portion of the overpayments without regard to the relevant factors set forth in 20 C.F.R. § 10.441(a),⁸ which denies administrative due process with respect to the amount offset.⁹

The case will, therefore, be remanded for OWCP to properly calculate the entire amount of the overpayment of compensation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for the period January 1, 2016 through May 22, 2021, because he concurrently received SSA age-related retirement benefits while also receiving FECA benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the amount of the overpayment.

⁸ 20 C.F.R. § 10.441(a). This section states that, in collecting an overpayment of compensation, OWCP shall decrease later payment of compensation by 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 hardship.

⁹ *J.K.*, *supra* note 7; *R.H.*, Docket No. 17-1933 (issued February 15, 2018); *R.O.*, Docket No. 17-0894 (issued January 26, 2018).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 21, 2022
Washington, DC

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

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

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