

January 30, 2021 for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$318.62 every 28 days from his continuing compensation payments.

FACTUAL HISTORY

On May 28, 1994 appellant, then a 39-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he contracted coccidiomycosis (Valley Fever) due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on May 23, 1994. After a period of intermittent absences, appellant stopped work on May 23, 1994 and did not return. OWCP accepted the claim for coccidiomycosis of the lungs, skin, cervical spine, and skull. It paid appellant wage-loss compensation on the supplemental rolls, effective May 23, 1994, and on the periodic rolls, commencing March 3, 1996.

On December 10, 2020 OWCP provided SSA a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form. It listed the computation period as August 1, 2020 and continuing.

On February 5, 2021 OWCP received from SSA a completed FERS/SSA dual benefits form, wherein SSA calculated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning August 1, 2020, the SSA rate with FERS was \$1,344.80 and without FERS was \$510.40. Beginning December 1, 2020, the SSA rate with FERS was \$1,362.20 and without FERS was \$517.00.

In a FERS offset overpayment calculation worksheet dated February 23, 2021, OWCP used the information provided by SSA to calculate a total overpayment in the amount of \$5,055.63. It determined that, for the period August 1 through November 30, 2020, appellant received an overpayment in the amount of \$3,355.94; and for the period December 1, 2020 through January 30, 2021, appellant received an overpayment in the amount of \$1,699.69.

In a letter dated February 23, 2021, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that 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 \$780.18 every 28 days. OWCP indicated that, to account for his SSA offset, appellant's FECA wage-loss compensation would be adjusted to reflect a new net compensation amount of \$1,239.48 effective January 31, 2021.

In a preliminary overpayment determination dated March 5, 2021, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$5,055.63 for the period August 1, 2020 through January 30, 2021 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. 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), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, assets, and expenses. It advised him that it would deny waiver if he failed to furnish the requested financial information within 30 days. OWCP provided an appeal request form and further notified appellant 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 preresumption hearing. No response was received.

By decision dated December 8, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$5,055.63 for the period August 1, 2020 through January 30, 2021 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because he had not responded to the preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$318.62 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,055.63 for the period August 1, 2020 through January 30,

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *D.L.*, Docket No. 20-0716 (issued June 1, 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).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997).

2021, as he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability from work due to his accepted injury beginning May 23, 1994. Appellant received SSA age-related retirement benefits beginning August 1, 2020. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that appellant concurrently received SSA age-related retirement benefits that were attributable to his federal service. Accordingly, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received a dual benefits form 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 for the specific period August 1, 2020 through January 30, 2021. OWCP provided its calculation for each relevant period based on SSA's dual benefits form and determined that appellant received an overpayment of compensation in the amount of \$5,055.63.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period August 1, 2020 through January 30, 2021 and finds that appellant received an overpayment of compensation in the amount of \$5,055.63.

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."⁸ Section 10.438 of OWCP 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.⁹

ANALYSIS -- ISSUE 2

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

⁷ See *supra* note 6; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). See also *N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 10.438.

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. However, appellant had the responsibility to provide financial information to OWCP and failed to do so.

In its preliminary overpayment determination, dated March 5, 2021, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. It advised that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not provide the requested Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

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

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹⁰

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his 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 hardship.¹¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$318.62 from appellant's continuing compensation every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$318.62 from appellant's compensation payments every 28 days, OWCP took into consideration that appellant had not submitted the requested financial information as well as the other factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting

¹⁰ 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹¹ *Id.*

hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$318.62 from appellant's continuing compensation every 28 days.¹²

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$5,055.63 for the period August 1, 2020 through January 30, 2021, for which he was without fault, as he concurrently received FECA wage-loss compensation benefits 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 required recovery of the overpayment by deducting \$318.62 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2021 decision of the Office of Workers' Compensation is affirmed.

Issued: November 10, 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

¹² See *D.L.*, *supra* note 6; *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).