

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

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A.G., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,  
LOMA LINDA VA MEDICAL CENTER,  
Loma Linda, CA, Employer  
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**Docket No. 22-0569**  
**Issued: September 14, 2022**

*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 8, 2022 appellant filed a timely appeal from a February 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$599.14 for the period July 1 through November 7, 2020 for which he was without fault, because he concurrently received FECA wage-loss

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence 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.*

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 \$500.64 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On May 9, 2006 appellant, then a 51-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2006 he strained his right hip and leg when pushing a food cart while in the performance of duty. Appellant's retirement system coverage was listed on the claim form as Federal Employees Retirement System (FERS).

OWCP accepted the claim for lumbar sprain and lumbosacral spondylosis without myelopathy. It paid appellant wage-loss compensation on the supplemental rolls, as of January 2, 2009, and the periodic rolls, effective November 22, 2009.

On September 10, 2020 OWCP contacted SSA to obtain the appropriate information to determine whether an offset of compensation benefits was required.

On October 20, 2020 OWCP received a completed FERS/SSA dual benefits form from SSA, which indicated that appellant had been in receipt of SSA age-related retirement benefits since July 1, 2020. The form listed appellant's SSA age-related retirement benefit rate with and without a FERS offset. Beginning July 1, 2020, the SSA rate with FERS was \$1,120.90, and without FERS was \$981.10.

OWCP completed a FERS offset overpayment calculation worksheet on November 10, 2020. It indicated that the FERS offset each month was \$139.80, and every 28 days was \$129.05. Therefore, during the period July 1 to November 7, 2020, appellant received an overpayment in the amount of \$599.14.

On November 10, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$599.14 had been created because it had failed to reduce appellant's wage-loss compensation for the period July 1 through November 7, 2020 to offset his SSA age-related retirement benefits that were attributable to federal service. It determined that appellant was without fault in the creation of the overpayment because he relied on information given to him in writing by OWCP or another government agency. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised appellant that he could request waiver of recovery 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. OWCP also provided an overpayment action request form and notified appellant 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 prerecoumment hearing. No response was received.

By decision dated February 28, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$599.14 for the period July 1 through November 7, 2020, because he concurrently received SSA

age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that, as of the date of the decision, no response had been received to the preliminary overpayment determination and appellant had not requested waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$500.64 every 28 days from appellant's continuing compensation payments.

### **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.<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 any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>5</sup> 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 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 \$599.14, during the period July 1 through November 7, 2020, for which he was without fault, as he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.<sup>7</sup>

The evidence of record indicates that, while appellant was receiving compensation for wage-loss under FECA, he also was receiving SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA establishes that, during the period July 1 through November 7, 2020, appellant received SSA age-related retirement benefits that were attributable to federal service while he

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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); *see B.W.*, Docket No. 21-0277 (issued May 6, 2022); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 5; *L.J.*, *supra* note 5.

concurrently received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's 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. SSA provided appellant's age-related retirement benefits rate with FERS and without FERS for the period covering July 1 through November 7, 2020. OWCP provided its calculations for the relevant period based on the SSA worksheet, which established that appellant received an overpayment in the amount of \$599.14. The Board, thus, finds that appellant received prohibited dual benefits for the period July 1 through November 7, 2020, totaling \$599.14.

### **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.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment, OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</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>11</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>12</sup>

In its preliminary determination dated November 10, 2020, OWCP requested that appellant submit a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Appellant, however, did not respond. As such, OWCP did not have the financial information and supporting documentation necessary for it to determine if recovery of

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<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

<sup>10</sup> *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.438.

<sup>12</sup> 20 C.F.R. § 10.436.

the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>13</sup>

### **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.<sup>14</sup>

Section 10.441(a) of OWCP's regulations<sup>15</sup> provides in pertinent part:

“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 soon as the error is discovered or his or her attention is called to 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.”<sup>16</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.64 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its November 10, 2020 preliminary overpayment determination and afforded him the opportunity to provide appropriate financial information and documentation.<sup>17</sup> Appellant did not complete the Form OWCP-20 prior to the February 28, 2022 final overpayment decision.

The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>18</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt

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

<sup>14</sup> 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>15</sup> *Id.* at § 10.441(a).

<sup>16</sup> *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>17</sup> 20 C.F.R. § 10.438.

<sup>18</sup> 20 C.F.R. § 10.438; *M.A.*, Docket No. 21-0403 (issued December 17, 2021); *B.G.*, Docket No. 20-0541 (issued April 28, 2021).

promptly and in full.<sup>19</sup> As appellant did not submit a completed Form OWCP-20 and supporting financial documentation as requested, the Board finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$500.64 every 28 days.

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$599.14 for the period July 1 through November 7, 2020 for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset; and that OWCP properly denied waiver of recovery of the overpayment. The Board further finds that OWCP properly required recovery of the overpayment by deducting \$500.64 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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

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<sup>19</sup> *M.A., id.*; *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).