

properly determined that appellant received an overpayment of compensation in the amount of \$21,660.87 for which he was without fault, for the period February 1, 2020 through May 22, 2021, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$570.16 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 11, 2018 appellant then a 64-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral knee and back conditions due to factors of his federal employment, including repetitive bending, lifting, walking, and twisting while unloading trailers. He noted that he first became aware of his conditions on December 22, 2015, and realized their relationship to his federal employment on April 23, 2018. On the reverse side of the claim form, appellant's retirement plan coverage was listed as the Federal Employees Retirement System (FERS). OWCP subsequently accepted the claim for intervertebral disc disorder with radiculopathy of the lumbar region, bucket-handle tear of left knee medial meniscus, left knee chondromalacia, and sprain of other specified parts of the right knee. It paid appellant wage-loss compensation on the supplemental rolls as of February 29, 2020 and on the periodic rolls as of March 29, 2020.³

On February 8, 2021 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or his benefits would be suspended. OWCP sent the letter to appellant's last known address of record. No response was received.

By decision dated March 31, 2021, OWCP suspended appellant's wage-loss compensation, effective April 25, 2021, due to his failure to submit the Form CA-1032, as requested. It noted that, if he completed and returned an enclosed copy of the Form CA-1032, his compensation would be restored retroactively to the date it was suspended.

On April 22, 2021 OWCP received a completed FERS/SSA dual benefits form, wherein SSA advised that appellant reached retirement age and became eligible for SSA age-related retirement benefits effective February 2020. SSA reported his SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from February 1 through December 1, 2020. Beginning February 2020, the SSA rate with FERS was \$2,341.40 and without FERS was \$970.40. Beginning December 2020, the SSA rate with FERS was \$2,371.80 and without FERS was \$983.00.

On May 26, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment amount of \$21,660.87 for the period February 1, 2020

³ In a notification of personnel action (PS Form 50) dated May 29, 2020, the employing establishment advised that appellant had voluntarily retired. The effective date of his retirement was May 31, 2020.

through May 22, 2021. It determined that, during the period February 1 through November 30, 2020, appellant received an overpayment in the amount of \$13,740.13 and during the period December 1, 2020 through May 22, 2021, he received an overpayment in the amount of \$7,920.74.

On May 26, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$21,660.87 had been created because the SSA/FERS offset was not applied to appellant's age-related retirement benefits for the period February 1, 2020 through May 22, 2021. 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 payment method and advised him 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 and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP further 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 evidence, or a preresoupment hearing. No response was received.

By decision dated July 28, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$21,660.87 for the period February 1, 2020 through May 22, 2021 because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his 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 be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$570.16 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.⁴

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months.⁵ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.⁶

⁴ 5 U.S.C. § 8106(b).

⁵ 20 C.F.R. § 10.528.

⁶ *Id.*; see also *id.* at § 10.525.

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to suspend appellant's compensation, effective April 25, 2021, for failing to submit a Form CA-1032, as requested.

On February 8, 2021 OWCP provided appellant with a Form CA-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.⁷ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.⁸

The record indicates that appellant failed to timely submit the Form CA-1032 within 30 days of OWCP's request. He was receiving wage-loss compensation and he was, therefore, required to complete the Form CA-1032. Appellant's failure to file a Form CA-1032 within 30 days supports the suspension of compensation. Thus, the Board finds that OWCP properly suspended his compensation benefits, effective April 25, 2021, pursuant to 20 C.F.R. § 10.528.

LEGAL PRECEDENT -- ISSUE 2

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.⁹ 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.¹⁰

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.¹¹ 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 age-related retirement benefits earned as a federal employee is part of the FERS retirement

⁷ C.C., Docket No. 17-0043 (issued June 15, 2018); A.H., Docket No. 15-0241 (issued April 3, 2015) (Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee).

⁸ *Id.*

⁹ 5 U.S.C. § 8102(a).

¹⁰ *Id.* at § 8116.

¹¹ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

package, and the concurrent receipt of FECA benefits and FERS benefits without an appropriate offset is a prohibited dual benefit.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, 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 on the supplemental rolls as of February 29, 2020, and on the periodic rolls as of March 29, 2020. Beginning February 1, 2020, appellant received SSA age-related retirement benefits. As noted, a claimant cannot concurrently receive wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹³ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. As OWCP neglected to offset his FECA benefits for the period February 1, 2020 through May 22, 2021, the Board finds that he received an overpayment of wage-loss compensation.¹⁴ Therefore, fact of overpayment is established.¹⁵

The Board further finds, however, that this case is not in posture for decision regarding the period and the amount of the overpayment.

As found above, appellant's failure to timely file a Form CA-1032 resulted in the suspension of compensation effective April 25, 2021, pursuant to 20 C.F.R. § 10.528. The period of the suspension of compensation, however, partially overlaps with the period of the overpayment of compensation from February 1, 2020 through May 22, 2021. It remains unclear whether OWCP accounted for the period of the suspension of compensation benefits, effective April 25, 2021, when calculating the overpayment period and overpayment amount. A claimant is entitled to an overpayment decision that clearly explains how the period and amount was calculated.¹⁶ The Board will, therefore, remand the case for OWCP to further explain its calculation of the period and amount of the overpayment.

On remand, OWCP shall determine the period and amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, an overpayment recovery questionnaire, and instructions for

¹² FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁴ *Id.*

¹⁵ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹⁶ *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

appellant to provide supporting financial information.¹⁷ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁸

CONCLUSION

The Board finds that OWCP properly suspended appellant's compensation benefits for failure to submit a Form CA-1032, as requested. The Board further finds that OWCP properly determined that he received an overpayment of compensation for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board also finds, however, that the case is not in posture for decision regarding the period and the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The July 28, 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: April 19, 2023
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

¹⁷ See *L.K.*, Docket No. 29-0416 (issued November 12, 2020).

¹⁸ In light of the Board's disposition of Issue 2, Issues 3, and Issues 4 are rendered moot.