

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

E.H., Appellant)	
)	
and)	Docket No. 23-0138
)	Issued: December 14, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Baltimore, MD, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 28, 2022 appellant filed a timely appeal from a May 5, 2022 merit decision 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 \$2,525.94 for the period July 1, 2011 through May 22, 2021, for which he was without fault, because he concurrently received FECA wage-loss

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 5, 2022 decision, OWCP received additional evidence. 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; and (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$632.14 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on different issues.³ The facts and circumstances of the case as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On July 17, 1984 appellant, then a 36-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 1984 he injured his back when he fell backward while in the performance of duty. OWCP accepted the claim for contusions of the right hand and back. Appellant stopped work on July 17, 1984, returned to work for one day on July 30, 1984, and then stopped work and did not return. He resigned from the employing establishment on September 14, 1984. OWCP paid appellant wage-loss compensation on the periodic rolls.

An SF-50 dated February 12, 1990 indicated that appellant's retirement coverage was FICA (Federal Insurance Contributions Act) and CSRS (Civil Service Retirement System) partial.

A June 4, 1990 SF 50 indicated that appellant's retirement coverage was the Federal Employees Retirement System (FERS) and FICA.

A September 25, 1992 SF 50B specified that appellant worked as a substitute teacher. The form indicated his retirement plan as FICA.

A September 1993 SF 50B provided that appellant's employment as a motor vehicle operator had been terminated as he was unable to perform the duties of his position. His retirement plan was FICA and another plan that is not legible.

On March 18, 2021 OWCP sent a FERS/SSA dual benefits form to SSA for completion.

On May 4, 2021 SSA completed a FERS/SSA dual benefits form and provided appellant's monthly benefits with and without FERS from July 2011 through December 2020. SSA indicated that effective July 2011, appellant's SSA rate with FERS was \$337.40 and without FERS was \$318.10; effective December 2011, his SSA rate with FERS was \$349.50 and without FERS was \$329.50; effective December 2012, his SSA rate with FERS was \$355.40 and without FERS was \$335.00; effective January 2013, his SSA rate was \$355.40 with FERS and \$335.00 without FERS; effective December 2013, his SSA rate with FERS was \$360.70 and without FERS was \$340.00; effective December 2014 and 2015, his SSA rate with FERS was \$366.80 and without FERS was \$345.70; effective December 2016, his SSA rate with FERS was \$367.90 and without FERS was

³ Docket No. 90-1201 (issued January 8, 1991); Docket No. 92-1525 (issued April 14, 1993); Docket No. 95-1448 (issued January 20, 1998), *petition for recon. denied*, Docket No. 95-1448 (issued July 29, 1998); Docket No. 03-1105 (issued December 4, 2003); Docket No. 07-2266 (issued November 21, 2008); *Order Dismissing Appeal*, Docket No. 10-681 (issued May 27, 2010); *Order Dismissing Appeal*, Docket No. 10-856 (issued May 27, 2010); Docket No. 10-1958 (issued July 7, 2011); *Order Dismissing Appeal*, Docket No. 16-1126 (issued May 24, 2017).

\$346.70; effective December 2017, his SSA rate with FERS was \$375.20 and without FERS was \$353.60; effective December 2018, his SSA rate with FERS was \$385.60 and without FERS was \$363.40; effective December 2019, his SSA rate with FERS was \$391.70 and without FERS was \$369.20; and effective December 2020, his SSA rate with FERS was \$396.80 and without FERS was \$373.90.

OWCP completed a FERS offset calculation form on May 26, 2021. It determined the 28-day FERS offset amount for the days in each period from July 1, 2011 through May 22, 2021. OWCP found that, from July 1 through November 30, 2011, appellant received an overpayment of \$97.35; from December 1, 2011 through November 30, 2012, he received an overpayment of \$241.32; from December 1, 2012 through November 30, 2013, he received an overpayment of \$245.47; from December 1, 2013 through November 30, 2014, he received an overpayment of \$249.08; from December 1, 2014 through November 30, 2015, he received an overpayment of \$253.90; from December 1, 2015 through November 30, 2016, he received an overpayment of \$254.59; from December 1, 2016 through November 30, 2017, he received an overpayment of \$255.10; from December 1, 2017 through November 30, 2018, he received an overpayment of \$259.91; from December 1, 2018 through November 30, 2019, he received an overpayment of \$267.13; and from December 1, 2019 through November 30, 2020, he received an overpayment of \$271.48; and from December 1, 2020 through May 22, 2021, he received an overpayment of \$130.61. OWCP therefore calculated a total overpayment amount of \$2,525.94.

On May 26, 2021 OWCP notified appellant of its preliminary overpayment determination that he had received a \$2,525.94 overpayment of compensation for the period July 1, 2011 through May 22, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. 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 payment method. Additionally, it provided an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precoupment hearing.

On June 17, 2021 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review. There was no accompanying financial information.

Following a preliminary review, OWCP's hearing representative set aside the May 26, 2021 preliminary overpayment determination. The hearing representative noted that OWCP had not sufficiently explained its calculation of the overpayment in the preliminary overpayment determination. The hearing representative remanded the case for OWCP to issue a new preliminary overpayment determination and obtain updated financial information from appellant.

On October 7, 2021 OWCP notified appellant of its preliminary overpayment determination that he had received a \$2,525.94 overpayment of compensation for the period July 1, 2011 through May 22, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It provided its detailed calculation of the overpayment. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he submit a completed Form OWCP-20 to determine a reasonable payment method and advised that he could

request waiver of recovery of the overpayment. Additionally, OWCP 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 prerecoupment hearing.

On November 5, 2021 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic prerecoupment hearing was held on February 25, 2022. Appellant asserted that he was under CSRS, not FERS. The hearing representative advised that Forms SF 50 dated June 4, 1990 and September 9, 1993 indicated that he was a FERS employee. She noted that he also had earlier employment where his retirement coverage was not FERS. Appellant advised that he worked temporarily for other Federal Government agencies. No financial information was received.

By decision dated May 5, 2022, OWCP's hearing representative finalized the October 7, 2021 preliminary overpayment determination. She determined that appellant had received a \$2,525.94 overpayment for the period July 1, 2011 through May 22, 2021 for which he was without fault. The hearing representative found that he was a FICA and CSRS partial employee in 1986 and 1988, but subsequently worked for other Federal Government agencies in 1990, 1992, and 1993 as a FERS employee. She denied waiver of recovery of the overpayment, noting that appellant had not provided financial information. OWCP's hearing representative noted that appellant's net wage-loss compensation was \$2,528.57 every 28 days. She required recovery of the overpayment by deducting \$632.14 from appellant's continuing compensation payments every 28 days, or 25 percent of his net 28-day compensation.

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.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 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.⁷

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116.

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

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,525.94 for the period July 1, 2011 through May 22, 2021, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

The case record establishes that appellant had retirement coverage under FERS during part of his federal employment. A June 4, 1990 SF 50 indicated that appellant had retirement coverage under FERS and FICA. OWCP paid appellant wage-loss compensation on the periodic rolls. Appellant also received SSA age-related retirement benefits beginning July 1, 2011. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service without an appropriate offset.⁸ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. Accordingly, the Board finds that fact of overpayment has been established.⁹

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from July 2011 through December 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$2,525.94. The Board has reviewed OWCP's detailed calculation of dual benefits received by appellant for the period July 1, 2011 through May 22, 2021 and finds that an overpayment of compensation in the amount of \$2,525.94 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹¹ provides that an overpayment must be recovered 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. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

⁸ *Id.* See *F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ See *L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹⁰ See *J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹¹ *Supra* note 1.

¹² *IR.*, Docket No. 22-0088 (issued May 5, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹³ An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁴

Section 10.437 provides that recovery of an overpayment is against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes her position for the worse.¹⁵

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.¹⁶ Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁷

In its October 7, 2021 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. No response was received. OWCP, therefore, did not have the

¹³ 20 C.F.R. § 10.436. OWCP procedures provide that a claimant is deemed to need substantially all his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Its procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or 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) and (3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁵ 20 C.F.R. § 10.437(b)(1).

¹⁶ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁷ 20 C.F.R. § 10.438; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

necessary current financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁸

Consequently, 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.¹⁹

Section 10.441 of OWCP's regulations²⁰ 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 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 any hardship.²¹ When an individual fails to provide the requested information on income, expenses and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$632.14 from appellant's continuing compensation payments every 28 days.

While appellant requested waiver of recovery of the overpayment, he did not provide financial information or supporting documentation as requested by OWCP. OWCP's regulations provide that the overpaid individual is responsible for submitting information about income, expenses, and assets as specified by OWCP.²³ When an individual fails to provide the requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ OWCP's procedures specify that, in these instances, OWCP should

¹⁸ *E.M.*, Docket No. 22-0081 (issued August 22, 2022); *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

¹⁹ *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Id.* at § 10.441(a).

²¹ *Id.*; *see L.G.*, Docket No. 19-1274 (issued July 10, 2020).

²² *C.L.*, Docket No. 22-0349 (issued August 30, 2022); *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

²³ *Id.* at § 10.4381; *see also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²⁴ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

set the rate of recovery at 25 percent of the 28-day net compensation amount, until the balance of the overpayment is paid in full.²⁵ OWCP's hearing representative found that OWCP paid appellant \$2,528.57 in net wage-loss compensation every 28 days. The Board thus finds that OWCP properly required recovery of the overpayment by deducting \$632.14 from appellant's compensation payments every 28 days.²⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,525.94 for the period July 1, 2011 through May 22, 2021, for which he was without fault, 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 \$632.14 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2018).

²⁶ *B.F.*, Docket No. 22-0857 (issued December 9, 2022); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).