

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

S.O., Appellant)	
)	
and)	Docket No. 23-0718
)	Issued: December 13, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
LOUIS STOKES CLEVELAND VA MEDICAL)	
CENTER, Cleveland, OH, Employer)	
)	

Appearances:
Alan J. Shapiro., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 25, 2023 appellant, through counsel, filed a timely appeal from an April 19, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 19, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,614.61 for the period July 1, 2020 through July 16, 2022, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation 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 \$269.07 from appellant's continuing compensation benefits every 28 days.

FACTUAL HISTORY

On December 2, 2004 appellant, then a 46-year-old electronics mechanic, filed traumatic injury claim (Form CA-1) alleging that on November 23, 2004 he sustained a head injury and was knocked unconscious when he was testing a fire alarm in a crawl space while in the performance of duty. He stopped work on the date of injury. By decision dated January 12, 2005, OWCP accepted the claim for cervical, thoracic, and lumbar sprains, and bilateral shoulder sprains. By decision dated March 25, 2005, it expanded the acceptance of appellant's claim to include the additional conditions of forehead contusion and post-traumatic headaches. Appellant stopped work and OWCP paid him wage-loss compensation on the supplemental rolls, effective January 9, 2005, and on the periodic rolls, effective June 12, 2005.

OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA on July 28, 2022 to obtain information regarding appellant's potential receipt of dual benefits.

On August 3, 2022 OWCP received a completed FERS/SSA dual benefits form from SSA, wherein SSA reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from July 2020 through July 2022. Beginning July 2020, the SSA rate with FERS was \$1,055.00 and without FERS was \$714.50. Beginning December 2020, the SSA rate with FERS was \$1,068.70 and without FERS was \$723.70. Beginning December 2021, the SSA rate with FERS was \$1,131.70 and without FERS was \$766.40.

In an August 4, 2022 FERS offset calculation worksheet, OWCP found that an overpayment of compensation benefits had been created in the amount of \$8,614.61 for the period July 1, 2020 through July 16, 2022. It determined that: for the period July 1 through November 30, 2020, appellant received an overpayment of \$1,717.47; for the period December 1, 2020 through November 30, 2021, appellant received an overpayment of \$4,151.37; and for the period December 1, 2021 through July 16, 2022, appellant received an overpayment of \$2,745.77.

In a preliminary overpayment determination dated October 3, 2022, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$8,614.61 for the period July 1, 2020 through July 16, 2022 because appellant concurrently received FECA wage-loss compensation benefits 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) 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 to support her reported income, assets, and expenses. OWCP provided an overpayment action request form and further 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 October 14, 2022 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He disagreed with the fact and amount of the overpayment, and requested a possible waiver of recovery because he was found to be without fault in the creation of the overpayment. No supporting financial information or documentation was received.

A prerecoupment hearing was held on March 14, 2023. Counsel for appellant was present at the hearing. No financial documentation was provided.

By decision dated April 19, 2023, OWCP's hearing representative finalized the October 3, 2022 preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$8,614.61 for the period July 1, 2020 through July 16, 2022, because appellant concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. She determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation because he failed to provide any of the financial information requested. OWCP's hearing representative concluded that there was no evidence to substantiate that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. She required recovery of the overpayment by deducting \$269.07 from appellant's continuing compensation benefit payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) 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 his or her federal employment.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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.⁶ 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.⁷

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

ANALYSIS

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,614.61 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for the period July 1, 2020 through July 16, 2022, without an appropriate offset.

In its April 19, 2023 decision, OWCP found that an overpayment of compensation was created for the period July 1, 2020 through July 16, 2022. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. The record indicates that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-related retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ Consequently, the fact of overpayment has been established.⁹

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to rates of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS, and without FERS for periods commencing July 1, 2020 through July 16, 2022. OWCP provided its overpayment calculations for each relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 1, 2020 through July 16, 2022 and finds that an overpayment of compensation in the amount of \$8,614.61 was created.

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.¹⁰

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹¹ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who

⁸ See *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁹ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *A.S.*, Docket No. 17-0606 (issued December 21, 2017).

¹¹ 20 C.F.R. § 10.436(a)-(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one 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) (September 2020).

received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹²

OWCP's regulations provide 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. The information is also used to determine the repayment schedule, if necessary.¹³ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁵

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, had the responsibility to provide the appropriate financial information to OWCP.¹⁷

In its preliminary overpayment determination dated October 3, 2022, OWCP explained the importance of providing the completed overpayment questionnaire 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. It advised appellant that it would deny waiver if he failed to furnish the requested information within 30 days. Appellant, however, did not respond. As such, OWCP did not have the necessary 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

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

¹² *Id.* at § 10.437(a)-(b).

¹³ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *Id.* at § 10.438(b).

¹⁵ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁶ 20 C.F.R. § 10.436.

¹⁷ *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

¹⁸ *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

¹⁹ *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations 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 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.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$269.07 from appellant's continuing compensation payments every 28 days.²¹

OWCP provided appellant a Form OWCP-20 with the October 3, 2022 preliminary overpayment determination. Appellant did not complete the form or provide the necessary financial information to support his income and expenses prior to the final April 19, 2023 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³ The Federal (FECA) Procedure Manual provides that in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁴ While appellant did not submit the financial information requested, the record reflects that his continuing 28-day compensation as of April 19, 2023 was \$1,090.08. Therefore, deducting \$269.07 every 28 days from his continuing compensation is not in excess of the 25 percent repayment rate.²⁵

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$8,614.61 overpayment at the rate of \$269.07 from appellant's continuing compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$8,614.61 for the period July 1, 2020 through July 16, 2022 for which he was without fault, as he concurrently received SSA age-related retirement benefits while receiving FECA wage-loss compensation benefits, without an appropriate offset. The Board further finds that OWCP properly

²⁰ 20 C.F.R. § 10.441(a).

²¹ *L.K.*, Docket No. 19-1423 (issued March 2, 2020).

²² 20 C.F.R. § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²³ *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁴ Federal (FECA) Procedure Manual, *supra* note 11 at *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

²⁵ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$269.07 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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