

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,648.43 for the period June 1, 2020 through September 10, 2022, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits 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 \$459.72 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 25, 2017 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a back injury due to factors of his federal employment as a career employee. He indicated that he first became aware of the condition on March 17, 2017. On the second page of the claim form, appellant's supervisor indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for bilateral hip trochanteric bursitis, bilateral primary osteoarthritis of the hip, dislocation of L2-3 lumbar vertebra, spondylolisthesis of lumbosacral region, and spinal stenosis of the lumbar region. It paid appellant wage-loss compensation on the supplemental rolls beginning February 20, 2018 and on the periodic rolls beginning September 16, 2018.

On July 20, 2022 OWCP sent SSA a FERS/SSA dual benefits form for completion.

On a completed dual benefits form dated July 25, 2022, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period June 2020 through December 2021. With FERS, appellant was entitled to \$1,553.20 effective June 2020; \$1,573.40 effective December 2020; and \$1,666.10 effective December 2021. Without FERS, he was entitled to \$928.90 effective June 2020; \$940.90 effective December 2020; and \$996.30 effective December 2021.

In a September 28, 2022 FERS offset overpayment calculation worksheet, OWCP calculated appellant's FERS/SSA offset for each month from June 1, 2020 through September 10, 2022 and the amount of the overpayment for each period, for a total overpayment amount of \$17,648.43.

On November 30, 2022 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$17,648.43 had been created because it paid appellant wage-loss compensation payments for the period June 1, 2020 through September 10, 2022 that had not been reduced to offset his SSA age-related retirement benefits attributable to his federal service. It noted its calculations that between June 1 and November 30, 2020 he received an overpayment of \$3,766.40; between December 1, 2020 and November 30, 2021 he received an overpayment of \$7,610.90; and between December 1, 2021 and September 10, 2022 he received an overpayment of \$6,271.13. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that he 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. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which support income and expenses. 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 prerecoument hearing. No response was received.

By decision dated January 27, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$17,648.43 for the period June 1, 2020 through September 10, 2022 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. OWCP required recovery of the overpayment by deducting \$459.72 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,648.43 for the period June 1, 2020 through September 10,

⁴ *Supra* note 2.

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *D.F.*, Docket No. 21-0652 (issued January 25, 2023); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *C.W.*, Docket No. 22-1012 (issued January 20, 2023); *see also P.P.*, Docket No. 22-0819 (issued November 23, 2022); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

2022, 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 received SSA age-related retirement benefits beginning June 2020. OWCP paid him wage-loss compensation on the supplemental rolls beginning February 20, 2018, and on the periodic rolls beginning September 16, 2018. 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.⁹ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits was attributable to his federal service. Accordingly, the Board finds that fact of overpayment has been established.¹⁰

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 appellant's SSA age-related retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS and without FERS for specific periods June 2020 through December 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$17,648.53. The Board has reviewed OWCP's calculation of dual benefits received by him for the period June 1, 2020 through September 10, 2022 and finds that an overpayment of compensation in the amount of \$17,648.53 was created.¹¹

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.¹² The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹³

Recovery of an overpayment will defeat the purpose of FECA when 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

⁹ 20 C.F.R. § 10.421(d); *S.M.*, *supra* note 7; *F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *D.F.*, *supra* note 7; *see L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹¹ *D.F.*, *id.*; *see N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹² 5 U.S.C. § 8129.

¹³ *D.W.*, Docket No. 23-0137 (issued June 23, 2023); *A.C.*, *supra* note 9; *Robert Atchison*, 41 ECAB 83, 87 (1989).

beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁴ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁵

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who 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.¹⁶

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. The information is also used to determine the repayment schedule, if necessary.¹⁷ 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.¹⁸

ANAYLSIS -- 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 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.¹⁹ Appellant had the responsibility to provide financial information to OWCP,²⁰ but failed to do so.

In its preliminary overpayment determination, dated November 30, 2022, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial

¹⁴ 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), (3) (September 2020).

¹⁵ *Id.* at Chapter 6.400.4a(3); *D.F.*, *supra* note 7; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁶ 20 C.F.R. § 10.437(a)-(b).

¹⁷ *Id.* at § 10.438(a); *C.W.*, *supra* note 8; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Id.* at § 10.438(b).

¹⁹ *Id.* at § 10.436.

²⁰ *Id.* at § 10.438; *D.W.*, *supra* note 13; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. It afforded him 30 days to submit the necessary information. Appellant did not submit a 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 prior to the final decision issued on January 27, 2023.

Accordingly, as appellant has not submitted the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, 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.²¹

Section 10.441(a) of OWCP's regulations²² 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.”²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$459.72 from appellant's continuing compensation payments every 28 days.

OWCP provided appellant a Form OWCP-20 with its November 30, 2022 preliminary overpayment determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP. Appellant, however, did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support his income and expenses prior to the final January 27, 2023 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁴ When an individual fails to provide requested financial information, OWCP should

²¹ 20 C.F.R. § 10.441; *D.W.*, *supra* note 13; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²² *Id.* at § 10.441(a).

²³ *Id.*; *J.H.*, Docket No. 22-1375 (issued May 16, 2023); *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁴ 20 C.F.R. § 10.438(a).

follow minimum collection guidelines designed to collect the debt promptly and in full.²⁵ As appellant did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$459.72 from his continuing 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 \$17,648.43 for the period June 1, 2020 through September 10, 2022, 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 \$459.72 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 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 *D.W.*, *supra* note 13; *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 14 at Chapter 6.500.2 (September 2020).

²⁶ *D.W.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).