



through May 22, 2021, for which he was without fault, because he concurrently received FECA wage-loss 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 \$431.85 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On August 20, 1998 appellant, then a 44-year-old merchant mariner, filed an occupational disease claim (Form CA-2) alleging that he developed pinched nerves in his neck due to factors of his federal employment as an able seaman. He noted that he first became aware of his condition on June 20, 1992 and realized its relation to his federal employment on July 20, 1998. Appellant stopped work on July 23, 1998. OWCP accepted his claim for acceleration of cervical degenerative disc disease and cervical radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls as of July 23, 1998 and on the periodic rolls as of June 16, 2002.

On March 5, 2020 SSA forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits form to OWCP, which reported appellant's SSA age-related retirement benefit rates with and without a FERS offset for the period September 2009 through December 2019.

On March 26, 2021 the employing establishment advised that appellant's retirement code was "K" (FERS).

In a May 19, 2021 FERS/SSA dual benefits form, SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset for the period September 2009 through December 2020. Beginning September 2009, the SSA rate with FERS was \$633.00 and without FERS was \$249.00. Beginning December 2011, the SSA rate with FERS was \$656.00 and without FERS was \$258.00. Beginning July 2012, the SSA rate with FERS was \$655.90 and without FERS was \$257.90. Beginning December 2012, the SSA rate with FERS was \$666.90 and without FERS was \$262.90. Beginning December 2013, the SSA rate with FERS was \$676.90 and without FERS was \$266.90. Beginning December 2014, the SSA rate with FERS was \$687.90 and without FERS was \$270.90. Beginning December 2015, the SSA rate with FERS was \$688.80 and without FERS was \$270.80. Beginning December 2016, the SSA rate with FERS was \$690.00 and without FERS was \$272.00. Beginning December 2017, the SSA rate with FERS was \$704.00 and without FERS was \$277.00. Beginning December 2018, the SSA rate with FERS was \$723.50 and without FERS was \$285.50. Beginning December 2019, the SSA rate with FERS was \$735.60 and without FERS was \$289.60. Beginning December 2020, the SSA rate with FERS was \$744.50 and without FERS was \$293.50.

In a FERS offset overpayment calculation worksheet dated June 15, 2021, OWCP used the information provided by SSA on May 19, 2021 to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment in the amount of \$58,443.59. It found that from September 1 through November 30, 2009 appellant received an overpayment in the amount of \$1,152.00; from December 1, 2009 through November 30, 2010 appellant received an overpayment in the amount of \$4,620.66; from December 1, 2010 through November 30, 2011 appellant received an overpayment in the amount of \$4,620.66; from December 1, 2011 through

June 30, 2012 appellant received an overpayment in the amount of \$2,794.75; from July 1 through November 30, 2012 appellant received an overpayment in the amount of \$2,007.49; from December 1, 2012 through November 30, 2013 appellant received an overpayment in the amount of \$4,861.32; from December 1, 2013 through November 30, 2014 appellant received an overpayment in the amount of \$4,933.52; from December 1, 2014 through November 30, 2015 appellant received an overpayment in the amount of \$5,017.75; from December 1, 2015 through November 30, 2016 appellant received an overpayment in the amount of \$5,043.56; from December 1, 2016 through November 30, 2017 appellant received an overpayment in the amount of \$5,029.78; from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$5,138.08; from December 1, 2018 through November 30, 2019 appellant received an overpayment in the amount of \$5,270.44; from December 1, 2019 through November 30, 2020 appellant received an overpayment in the amount of \$5,381.41; and from December 1, 2020 through May 22, 2021 appellant received an overpayment in the amount of \$2,572.19.

In a June 16, 2021 letter, OWCP informed appellant that his wage-loss compensation benefits would be reduced effective May 23, 2021 as a result of the portion of his SSA benefits attributed to his federal service since September 1, 2009 which had not been offset due to his FECA compensation benefits under 20 C.F.R. § 10.421(d). Appellant was to receive \$1,751.97 every 28 days as of May 23, 2021.

In a preliminary overpayment determination dated July 8, 2021, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$58,443.59 because his wage-loss compensation benefits had not been reduced for the period September 1, 2009 through May 22, 2021 by the portion of his SSA age-related retirement benefits attributable to his federal service. It explained each period in the FERS offset calculation and found a total overpayment of \$58,443.59. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. Additionally, it notified him that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On July 22, 2021 appellant requested a prerecoupment hearing regarding possible waiver of recovery of the overpayment with OWCP's Branch of Hearings and Review. Appellant submitted a completed Form OWCP-20 dated July 22, 2021, wherein he noted monthly income of \$5,229.89 and monthly expenses of \$4,294.00. No supporting financial documentation was received.

By decision dated September 8, 2021, an OWCP hearing representative conducted a preliminary review and determined that the case was not in posture for a hearing as there was no narrative explanation in the decision which explained the overpayment calculation. Thus, the hearing representative remanded the case to OWCP to issue a new preliminary overpayment determination which explained how the overpayment was calculated.

In a preliminary overpayment determination dated September 27, 2021, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$58,443.59 because his wage-loss compensation benefits had not been reduced for the period September 1, 2009 through May 22, 2021 by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It calculated the overpayment amount by determining the difference between his SSA amount with and without FERS for each stated period and added this amount to find a total overpayment of \$58,443.59. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete an overpayment action request form and a Form OWCP-20, and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and other records to support his reported income and expenses. Additionally, OWCP notified appellant that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days. No response was received.

OWCP, by decision dated January 5, 2022, finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$58,443.59 for the period September 1, 2009 through May 22, 2021 for which he was not at fault, because his FECA compensation payments were not offset by the portion of his SSA age-related retirement benefits attributable to his federal service. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP noted that appellant did not respond to its preliminary overpayment determination. It required recovery of the overpayment by deducting \$431.85 from his continuing compensation payments every 28 days.

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

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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 S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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 \$58,443.59 for the period September 1, 2009 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.

Documentation of record from the employing establishment confirms that appellant was under Code “K” signifying FERS.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls beginning February 28, 1999. The case record establishes that he concurrently received SSA age-related retirement benefits beginning September 1, 2009, without an appropriate offset. As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.<sup>8</sup>

OWCP received documentation from SSA with respect to appellant’s specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods September 2009 through December 2020. OWCP then provided its calculations for the period September 1, 2009 through May 22, 2021 based on SSA’s dual benefits form and determined that appellant received an overpayment in the amount of \$58,443.59.

The Board has reviewed OWCP’s calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$58,443.59 for the period September 1, 2009 through May 22, 2021.

### **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.<sup>9</sup>

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<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also P.P.*, Docket No. 22-0819 (issued November 23, 2022); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> 20 C.F.R. § 10.421(d); *id.*; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8129.

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.<sup>10</sup> An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>11</sup>

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.<sup>12</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. The information is also used to determine the repayment schedule, if necessary.<sup>13</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 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.<sup>14</sup> However, appellant had the responsibility to provide financial information and supporting documentation to OWCP, but failed to provide the latter.<sup>15</sup>

OWCP requested that appellant provide a completed Form OWCP-20 with supporting financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support income and expenses. Appellant

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<sup>10</sup> 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).

<sup>11</sup> *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>12</sup> 20 C.F.R. § 10.437(a)(b).

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

<sup>14</sup> *Id.* at § 10.436.

<sup>15</sup> *Id.* at § 10.438; *P.P.*, *supra* note 6; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

subsequently submitted a completed Form OWCP-20 dated July 22, 2021, but did not submit financial documentation to support his reported income, assets, and expenses. Thus, OWCP did not have financial documentation necessary to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment compensation.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides in pertinent part 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 soon 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.<sup>16</sup>

When an individual fails to provide requested information or supporting financial documentation regarding income, expenses, and assets, OWCP should follow minimum collection guidelines.<sup>17</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$431.85 from appellant's continuing compensation payments every 28 days.

The overpaid individual is responsible for providing information and supporting financial documentation regarding income, expenses, and assets as required 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 promptly and in full.<sup>19</sup> As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that OWCP properly required recovery of the \$58,443.59 overpayment at the rate of \$431.85 from his continuing compensation payments every 28 days.<sup>20</sup>

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<sup>16</sup> *Id.* at § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>17</sup> *Supra* note 10 at Chapter 6.500.8c(1) (September 2020).

<sup>18</sup> 20 C.F.R. § 10.438(a).

<sup>19</sup> *See P.P.*, *supra* note 6; *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 10 at Chapter 6.500.3 (September 2020). *Id.* at § 10.436; *id.* at Chapter 6.400.4a(2).

<sup>20</sup> *See J.A.*, *id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$58,443.59 for the period September 1, 2009 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 \$431.85 from his continuing compensation payments every 28 days.

**ORDER**

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

Issued: January 20, 2023  
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