



retirement benefits and FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On June 10, 2004 appellant, a 44-year-old letter police officer, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2004 he sustained injuries during defense tactics training while in the performance of duty. OWCP accepted the claim for tear of right medial meniscus, right lateral collateral ligament strain, right chondromalacia patella, and right knee joint effusion. Appellant underwent an OWCP-approved right knee arthroscopy with chondroplasty and lateral retinacular release on December 17, 2004. OWCP paid him wage-loss compensation from December 17, 2004 through January 3, 2005, when he returned to a modified-duty position. By decision dated July 10, 2007, it reduced appellant's wage-loss compensation, effective December 18, 2006, as the position he held, effective December 18, 2006, as a transportation assistant, fairly and reasonably represented his wage-earning capacity. OWCP paid him on the periodic rolls for his loss of wage-earning capacity, effective June 10, 2007. Appellant retired effective June 30, 2021.

In a letter dated October 29, 2021, OWCP advised appellant of his weekly compensation rate on the periodic rolls. It further informed him that he must report any retirement income received from any federal agency, as federal employees who receive wage-loss compensation benefits under FECA are not permitted to concurrently receive benefits under certain other federal programs, including the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). OWCP also enclosed an election form for appellant's completion.

Following a February 2, 2022 conversation with appellant, OWCP, in a letter dated February 2, 2022, reminded him to select his election of benefits and complete the election form.

On February 23, 2022 OWCP received appellant's election of benefits form dated February 21, 2022. Appellant elected to receive retirement benefits through OPM. The effective date of his election was July 1, 2021. Appellant also indicated, with a checkmark, that he had not received a lump-sum annuity from OPM as a part of an alternative annuity under CSRS or as part of the death benefit under FERS.

A March 29, 2022 OWCP termination fiscal worksheet noted that the effective date of the periodic rolls termination was March 26, 2022, due to appellant's election of OPM benefits. It calculated that he received \$3,532.61 in FECA wage-loss compensation for the period July 1, 2021 through March 26, 2022, which it deemed was an overpayment.

On May 20, 2020 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$3,532.61, for the period July 1, 2021 through March 26, 2022, because appellant received prohibited dual benefit payments. It explained that the overpayment occurred because he had elected OPM retirement benefits effective July 1, 2021 and received FECA benefits beyond the election date of July 1, 2021. OWCP found 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 repayment method, and advised him that he could request a waiver of the overpayment. OWCP

further requested that appellant provide 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 him that failure to submit the requested information within 30 days would result in denial of waiver of the overpayment. Additionally, OWCP 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 precoupment hearing.

In a May 25, 2022 letter, D.B., an employing establishment injury compensation specialist, asserted that OWCP's preliminary overpayment determination may have been issued in error. He attached a copy of an April 28, 2022 letter, wherein OWCP requested that OPM reimburse it \$3,532.61 for the period July 1, 2021 through March 26, 2022. In a May 25, 2022 response to the May 25, 2022 letter, OWCP informed the employing establishment that it was alerting OPM of the reimbursement requirement from their office, not appellant.

By decision dated June 28, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,532.61 for the period July 1, 2021 through March 26, 2022, for which he was without fault. It explained that the overpayment occurred because he concurrently received both FECA benefits and OPM retirement benefits during this period, which resulted in a prohibited dual benefit payment. OWCP denied waiver of recovery of the overpayment and required recovery of the \$3,532.61 overpayment in full within 30 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.<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(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>5</sup> The beneficiary must elect the benefit that he or she wishes to receive.<sup>6</sup> OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous. This policy also applies to reemployed annuitants.<sup>7</sup>

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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(a).

<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(a) (January 1997); *see also* R.S., Docket No. 11-0428 (issued September 27, 2011); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

### ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$3,532.61 for the period July 1, 2021 through March 26, 2022.<sup>8</sup>

OWCP based its overpayment finding on its determination that appellant had received a prohibited dual benefit by receipt of OPM and FECA benefits for the period in question. While the record reflects that he received FECA wage-loss compensation for this period, the Board finds that OWCP has not established that he concurrently received OPM benefits.<sup>9</sup>

On February 21, 2022 appellant elected to receive OPM retirement benefits in lieu of FECA wage-loss compensation. The effective date of his election was July 1, 2021. Appellant indicated, with a checkmark, that he had not received a lump-sum annuity from OPM as a part of an alternative annuity under CSRS or as part of the death benefit under FERS. There is no evidence of record which establishes that appellant actually received OPM benefits for the period July 1, 2021 through March 26, 2022.<sup>10</sup> Rather, it was not until after appellant filed his election of benefits on February 21, 2022 that OWCP informed OPM that appellant had elected to receive retirement annuity benefits, effective July 1, 2021, in lieu of FECA wage-loss compensation and requested that OPM commence annuity payments effective retroactively to that date.

Therefore, the Board finds that fact of overpayment has not been established.<sup>11</sup>

### CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$3,532.61 for the period July 1, 2021 through March 26, 2022.

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<sup>8</sup> *B.C.*, Docket No. 20-1415 (issued April 14, 2021); *M.C.*, Docket No. 18-0074 (issued August 1, 2019).

<sup>9</sup> *See B.C., id.; R.R.*, Docket No. 18-0032 (issued May 3, 2018).

<sup>10</sup> *B.C., id.; J.M.*, Docket No. 15-1604 (issued May 23, 2016).

<sup>11</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 9, 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