

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

---

A.S., Appellant	)	
	)	
	)	
and	)	<b>Docket No. 22-0384</b>
	)	<b>Issued: March 13, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
West Sacramento, CA, Employer	)	
	)	

---

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 18, 2022 appellant, through counsel, filed a timely appeal from a January 5, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the January 5, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,836.74, for the period March 1, 2015 through June 19, 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 \$573.90 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On January 7, 2008 appellant, then a 58-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2008 he sustained a head injury, concussion, and lacerations when he hit his head on the roadway while in the performance of duty. He stopped work on that date and returned to full duty on January 24, 2008. On June 21, 2013 OWCP accepted appellant's claim for concussion and open wound of the scalp. On June 22, 2013 appellant stopped work. OWCP paid him wage-loss compensation on the supplemental rolls, effective June 22, 2013, and placed him on the periodic rolls, effective September 22, 2013. By decision dated December 3, 2013, it expanded the acceptance of appellant's claim to include post-concussion syndrome, tinnitus, and neck sprain.

On May 4, 2021 OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA.

On May 19, 2021 SSA submitted a completed FERS/SSA dual benefits form to OWCP. The form listed appellant's monthly SSA age-related retirement benefit rates beginning March 2015 with and without FERS contributions. The form reported: beginning March 2015, his SSA rate with FERS was \$1,666.30 and without FERS was \$1,144.30; beginning December 2015, his SSA rate with FERS was \$1,666.30 and without FERS was \$1,144.30; beginning December 2016, his SSA rate with FERS was \$1,671.20 and without FERS was \$1,147.70; beginning December 2017, his SSA rate with FERS was \$1,704.60 and without FERS was \$1,170.60; beginning December 2018, his SSA rate with FERS \$1,752.30 and without FERS was \$1,203.30; beginning December 2019, his SSA rate with FERS was \$1,780.30 and without FERS was \$1,222.50; and beginning December 2020, his SSA rate with FERS was \$1,803.40 and without FERS was \$1,238.30.

On June 9, 2021 OWCP completed a FERS offset overpayment calculation worksheet wherein it determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period from March 1, 2015 through June 19, 2021. It found that the overpayment totaled \$40,836.74.

Effective June 20, 2021, OWCP adjusted appellant's wage-loss compensation to include the offset of his SSA age-related retirement benefits attributable to his federal service.

In a preliminary overpayment determination dated June 23, 2021, OWCP advised appellant that he had received an overpayment of compensation in the amount of \$40,836.74 because it had failed to reduce his wage-loss compensation for the period March 1, 2015 through June 19, 2021

by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule. It informed him that he should provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, assets, and expenses. OWCP further advised that appellant could request waiver of recovery of the overpayment and 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 prerecoument hearing.

On July 1, 2021 appellant completed an overpayment action request form and requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review. He requested waiver of recovery of the overpayment.

Appellant completed a Form OWCP-20 on July 9, 2021. He listed his monthly income as \$2,200.00, \$1,752.00 in SSA benefits, and \$1,126.00 in Supplemental Security Income (SSI) benefits with the notation of "wife" for a total monthly income of \$5,078.00. Appellant noted that his monthly expenses included housing of \$1,013.00, food of \$400.00, clothing of \$250.00, and utilities of \$400.00. He provided a list of other debts paid by monthly installments of \$70.00 and \$200.00 for total monthly expenses of \$270.00. Appellant indicated that he had cash on hand of \$200.00, a checking account balance of \$2,000.00, a savings account balance of \$29,000.00, and current value of stocks and bonds of \$3,000.00.

A prerecoument hearing was held on November 3, 2021.

By decision dated January 5, 2022, OWCP's hearing representative finalized the June 23, 2021 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$40,836.74, for which he was without fault, because it had failed to reduce his wage-loss compensation benefits for the period March 1, 2015 through June 19, 2021 by the portion of his SSA age-related retirement benefits that were attributable to federal service. The hearing representative found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because his monthly income exceeded his monthly expenses by more than \$50.00. The hearing representative required recovery of the overpayment by deducting \$573.90 from appellant's 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>4</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>5</sup>

---

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

Section 10.421(d) of OWCP's implementing regulations requires that OWCP 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>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,836.74, for the period March 1, 2015 through June 19, 2021, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

In its January 5, 2020 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$40,836.74. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to federal service during the period March 1, 2015 through June 19, 2021

To determine the amount of the overpayment, the portion of SSA's benefits that were 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 age-related retirement benefit rates with FERS and without FERS for specific periods from March 1, 2015 through June 19, 2021. OWCP provided its calculations of the amount that should have been offset for each relevant period based on the information provided by SSA's dual benefits form and determined that appellant received an overpayment of compensation in the amount of \$40,836.74.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period March 1, 2015 through June 19, 2021 and finds that an overpayment of \$40,836.74 was created.<sup>9</sup>

### **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

---

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

<sup>8</sup> 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

<sup>9</sup> *J.T.*, Docket No. 21-0010 (issued September 30, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, 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.<sup>12</sup> 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.<sup>13</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 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 his or her position for the worse.<sup>14</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>15</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 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>16</sup> Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses or that his assets do not exceed a specified amount as determined by OWCP from

---

<sup>10</sup> 5 U.S.C. § 8129.

<sup>11</sup> A.C., Docket No. 18-1550 (issued February 21, 2019); L.S., 59 ECAB 350 (2008).

<sup>12</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the 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 (September 2020).

<sup>13</sup> *Id.* at Chapter 6.400.4a(3) (September 2020).

<sup>14</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>15</sup> Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 6.400.4c(3) (September 2020).

<sup>16</sup> *Supra* note 11.

data provided by the Bureau of Labor Statistics. Appellant submitted a completed Form OWCP-20 on July 9, 2021. OWCP considered his financial information to determine if recovery of the overpayment would defeat the purpose of FECA.

The Board finds that OWCP properly determined that appellant did not require substantially all his income to meet ordinary living expenses. OWCP procedures provide that 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, *i.e.*, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses plus \$50.00.<sup>17</sup> The evidence of record demonstrated that he had total current monthly income of \$1,752.00 in SSA benefits, \$1,126 in SSI benefits, and \$2,486.91 in FECA benefits for a total monthly income of \$5,364.91. Based on the financial information that appellant had provided, he had total monthly expenses of \$2,212.17. As his monthly income exceeds his ordinary and necessary living expenses by more than \$50.00, the Board finds that he did not need substantially all of his income for ordinary and necessary living expenses such that recovery would defeat the purpose of FECA.<sup>18</sup>

As appellant failed to establish that, recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, 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.<sup>19</sup>

Section 10.441(a) of OWCP's regulations<sup>20</sup> 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."<sup>21</sup>

---

<sup>17</sup> *Supra* note 12.

<sup>18</sup> *See V.G.*, Docket No. 20-1520 (issued September 21, 2021); *see also M.C.*, Docket No. 19-0699 (issued February 12, 2020).

<sup>19</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>20</sup> *Id.* at § 10.441(a).

<sup>21</sup> *Id.*: *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$573.90 from appellant's continuing compensation payments every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$573.90 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information he submitted as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, OWCP properly required recovery of the overpayment by deducting \$573.90 from his continuing compensation every 28 days.<sup>22</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,836.74, for the period March 1, 2015 through June 19, 2021, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without 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 \$573.90 from his continuing compensation payments every 28 days.

---

<sup>22</sup> See *J.R.*, Docket No. 17-181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

**ORDER**

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

Issued: March 13, 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