

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 23-0719</b>
	)	<b>Issued: November 27, 2023</b>
<b>U.S. POSTAL SERVICE, EDINBURG POST</b>	)	
<b>OFFICE, Edinburg, TX, Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 10, 2023 appellant filed a timely appeal from a January 13, 2023 merit decision and an April 5, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,435.92 for the period February 1 through July 16, 2022, for which he was without fault, because he concurrently received FECA wage-loss

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the April 5, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.

compensation benefits and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly denied appellant's request for a preresoucement hearing as untimely filed.

### **FACTUAL HISTORY**

On December 23, 2020 appellant, then a 65-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right inguinal and upper leg injury due to factors of his federal employment, including repetitively lifting his leg to brake his vehicle. He noted that he first became aware of his condition and realized its relationship to his federal employment on December 2, 2020. On the reverse side of the claim form appellant's retirement system coverage was noted as Federal Employees Retirement System (FERS). Appellant stopped work on December 14, 2020. OWCP accepted appellant's claim for right hip and right thigh sprains. It paid him wage-loss compensation on the supplemental rolls, effective April 10, 2021, and on the periodic rolls, effective August 15, 2021.

By decision dated November 30, 2021, OWCP expanded the acceptance of appellant's claim to include right hip trochanteric bursitis and right hip iliopsoas bursitis.

On July 6, 2022 OWCP received an election of benefits form (Form CA-1105) signed by appellant on June 30, 2022, which noted a date of election of retirement benefits on July 23, 2022.

Effective July 17, 2022, OWCP terminated appellant's wage-loss compensation benefits indicating that appellant had elected Office of Personnel Management (OPM) retirement benefits.

On July 28, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

On August 16, 2022 OWCP received a completed FERS/SSA dual benefits form from SSA. The form indicated that appellant received SSA age-related retirement benefits as of February 2022 and provided SSA age-related retirement benefit rates with FERS offset from February through July 28, 2022. Beginning February 2022, the SSA rate with FERS was \$2,606.80 and without FERS was \$517.10.

On September 28, 2022 OWCP completed a FERS offset adjustment compensation sheet wherein it determined the overpayment amount by subtracting the amount that OWCP should have paid appellant with the FERS offset from the amount that appellant received on the periodic rolls from February 1 through July 16, 2022. It found that the overpayment totaled \$11,435.92.

In a preliminary overpayment determination dated November 15, 2022, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$11,435.92 for the period February 1 through July 16, 2022, because he concurrently received FECA wage-loss compensation benefits and SSA age-related 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 repayment 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 and canceled checks, pay slips, and any other records that support income and expenses. Additionally, it 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 prerecoupment hearing.

On November 21, 2022 appellant completed an overpayment action request form and requested that OWCP make a decision based on the written evidence requesting a waiver of recovery of the overpayment. He indicated that his official retirement date was July 17, 2022.

Appellant completed a Form OWCP-20 on November 21, 2022. He did not list his monthly income or expenses, but noted his disagreement with OWCP's determination of an overpayment. Appellant submitted a copy of his election form dated June 30, 2022.

By decision dated January 13, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,435.92, for the period February 1 through July 16, 2022, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without, an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed the Form OWCP-20.

In an overpayment action request form dated and postmarked March 6, 2023, appellant indicated that he was requesting a prerecoupment hearing regarding the issue of possible waiver of the overpayment. He asserted that he was not informed of the overpayment until after his retirement and that he was not financially able to pay the overpayment because of financial difficulties.

By decision dated April 5, 2023, OWCP denied appellant's request for a prerecoupment hearing as untimely filed. It found that his request was made after the final overpayment determination and, thus, not subjected to the hearing provision of 5 U.S.C. § 8124(b).

### **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 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>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

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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); *L.J.*, 59 ECAB 264 (2007).

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>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,435.92, for the period February 1 through July 16, 2022, 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.

OWCP determined that appellant had received an overpayment of compensation in the amount of \$11,435.92 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>7</sup> The information provided by SSA established that appellant concurrently received SSA age-related retirement benefits that were attributable to federal service during the period February 1 through July 16, 2022. Consequently, the fact of overpayment has been established.<sup>8</sup>

To determine the amount of the overpayment, the portion of SSA 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 its age-related retirement benefit rates with FERS and without FERS beginning February 1, 2022. OWCP provided its calculations of the amount that should have been offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period February 1 through July 16, 2022 and finds that an overpayment of compensation in the amount of \$11,435.92 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 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

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

<sup>7</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>8</sup> *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

<sup>9</sup> *A.S.*, Docket No. 22-0384 (issued March 13, 2023); *J.T.*, Docket No. 21-0010 (issued September 30, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>10</sup> 5 U.S.C. § 8129.

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>

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. This information is also used to determine the repayment schedule, if necessary.<sup>16</sup> 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.<sup>17</sup>

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<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> 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>17</sup> *Id.* at § 10.438(b).

## **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>18</sup>

In its preliminary overpayment determination, dated November 15, 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, expenses, and assets. Appellant, however, did not submit a completed Form OWCP-20, nor did he provide any supporting financial documentation as requested. As he did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.<sup>19</sup>

Accordingly, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>20</sup>

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

OWCP's regulations provide that a claimant may request a prerecoument hearing with respect to an overpayment.<sup>21</sup> The date of the request is determined by the postmark or other carrier's date marking.<sup>22</sup> Failure to request the prerecoument hearing within 30 days shall constitute a waiver of the right to a hearing.<sup>23</sup> The only right to a review of a final overpayment decision is with the Board.<sup>24</sup> The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.<sup>25</sup>

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<sup>18</sup> *Id.* at § 10.436.

<sup>19</sup> *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *D.C.*, Docket No. 19-0118 (issued January 15, 2020).

<sup>20</sup> *P.P.*, Docket No. 22-0819 (issued November 23, 2022); *M.W.*, Docket No. 22-0791 (issued November 10, 2022).

<sup>21</sup> 20 C.F.R. § 10.432.

<sup>22</sup> *Id.* at §§ 10.439, 10.616(a).

<sup>23</sup> *Id.* at § 10.432; *see also C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

<sup>24</sup> 20 C.F.R. § 10.440(b).

<sup>25</sup> *Id.*

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing.

OWCP issued a preliminary overpayment determination on November 15, 2022. It advised appellant that he had 30 days from that date to request a prerecoupment hearing. The record indicates that OWCP properly mailed its preliminary overpayment determination dated November 15, 2022 to his last known address of record.<sup>26</sup> By decision dated January 13, 2023, OWCP finalized its preliminary overpayment determination.

In a March 6, 2023 letter, received March 14, 2023, appellant requested a prerecoupment hearing regarding the issue of possible waiver of the overpayment. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions. OWCP's regulations provide that, when a final overpayment is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request.<sup>27</sup> The only right to appeal is with the Board.<sup>28</sup> As appellant's March 6, 2023 request for a prerecoupment hearing was made after the final overpayment determination, the Board finds that OWCP properly denied his request for a hearing after issuance of the final overpayment determination.<sup>29</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,435.92 for the period February 1 through July 16, 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 also finds that OWCP properly denied waiver of recovery of the overpayment. The Board further finds that OWCP properly denied appellant's request for a prerecoupment hearing.

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<sup>26</sup> See *J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003). (Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; see *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

<sup>29</sup> *R.S.*, Docket No. 20-0624 (issued February 9, 2022); *J.R.*, Docket No. 20-1215 (issued June 17, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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