

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

C.W., Appellant)	
)	
and)	Docket No. 23-0096
)	Issued: October 2, 2023
U.S. POSTAL SERVICE, ALGIERS STATION,)	
POST OFFICE, New Orleans, LA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 31, 2022 appellant filed a timely appeal from an October 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,705.43, for the periods July 18, 2020 through April 25, 2021, and September 27, 2021 through July 16, 2022, 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

¹ 5 U.S.C. § 8101 *et seq.*

required recovery of the overpayment by deducting \$648.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On June 15, 2009 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2009 he sustained injuries to both hands, knees, and arms, and his right shoulder, when he was bitten by a dog and he fell while in the performance of duty.

OWCP accepted the claim for open wound of the right-hand finger with complications, contusion of right shoulder and upper arm, closed fracture of right phalanx or phalanges, closed fracture right metacarpal bone, traumatic arthropathy of the right hand, sprain of right shoulder and upper arm, superior right glenoid labrum lesion, and post-traumatic osteoarthritis of the right hand. It granted appellant a schedule award for 24 percent permanent impairment of his right arm, which ran for 74.88 weeks for the period February 16, 2015 to July 24, 2016. OWCP paid him wage-loss compensation on the supplemental rolls from July 18, 2020 through December 4, 2021 and then on the periodic rolls commencing December 5, 2021.

On July 28, 2022 OWCP forwarded a Federal Employees Retirement System (FERS) dual benefits form to the Social Security Administration (SSA) for completion.

On August 7, 2022 SSA completed the FERS/SSA dual benefits calculation which indicated that, effective May 1, 2020, appellant became eligible for SSA age-related retirement benefits. The form listed appellant's SSA age-related retirement benefit rate with and without a FERS offset. Beginning May 2020, the SSA rate with FERS was \$1,873.00, and without FERS was \$867.30; beginning December 2020, the SSA rate with FERS was \$1,897.30, and without FERS was \$878.50; and beginning December 2021, the SSA rate with FERS was \$2,009.20, and without FERS was \$930.30.

On August 9, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it computed a total overpayment amount of \$19,705.43, for the period July 18, 2020 through July 16, 2022.

On September 20, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it computed a total overpayment amount of \$19,705.42, for the period July 18, 2020 through April 25, 2021 and from September 27, 2021 through July 16, 2022. It related that during the 136-day period July 18 through November 30, 2020 appellant received an overpayment of \$4,509.07; during the 146-day period December 1, 2020 through April 25, 2021 appellant received an overpayment of \$4,903.67; during the 65-day period September 27 through November 30, 2021 appellant received an overpayment of \$2,183.14; and during the 228-day period December 1, 2021 through July 16, 2022 appellant received an overpayment of \$8,109.53.

In a preliminary overpayment determination dated September 20, 2022, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$19,705.43, for the period July 1, 2020 through July 16, 2022,² because he concurrently

² The overpayment calculation worksheets indicate that the overpayment began on July 18, 2020.

received SSA age-related retirement benefits and FECA wage-loss compensation 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. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP 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 precouplement hearing.

On October 21, 2022 OWCP received an overpayment action request form dated October 16, 2022. Appellant disagreed with the overpayment, and requested waiver of recovery of the overpayment because he was found to be without fault in the creation of the overpayment. He also requested that OWCP issue a decision based on the written evidence. Appellant submitted a Form OWCP-20 of even date and reported total monthly income of \$8,069.00, total monthly expenses of \$5,147.00. He reported cash on hand of \$1,000.00, a checking account balance of \$2,000.00, and a savings account balance of \$10,000.00.

By decision dated October 24, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$19,705.43, for the periods July 18, 2020 through April 25, 2021, and from September 27, 2021 through July 16, 2022, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP explained, “[a]s of this date, no response has been received to the Preliminary Overpayment Determination. You have not requested a waiver of the overpayment and it should be finalized for the reasons set forth in the preliminary decision.” It required recovery of the overpayment by deducting \$648.00 every 28 days from appellant’s continuing compensation payments.

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.³ 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.⁴

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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

attributable to the employee's federal service.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,705.43, for the periods July 18, 2020 through April 25, 2021, and from September 27, 2021 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.⁷

The evidence of record indicates that, while appellant was receiving compensation for wage loss under FECA, he also was receiving SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁸ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service, while he also received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

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 appellant's federal service. SSA provided his age-related retirement benefit rates with FERS and without FERS for specific periods July 18, 2020 through April 25, 2021 and from September 27, 2021 through July 16, 2022. OWCP provided its calculations for each relevant period based on the SSA worksheet which established that appellant received an overpayment in the amount of \$19,705.43. The Board has reviewed these calculations and finds that OWCP properly determined that an overpayment was created in the amount of \$19,705.43 during the periods July 18, 2020 through April 25, 2021 and September 27, 2021 through July 16, 2022.

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

⁵ 20 C.F.R. § 10.421(d); *see J.R.*, Docket No. 22-0464 (issued April 18, 2023); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁷ *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁸ *Supra* note 5.

recovery would defeat the purpose of FECA or would be against equity and good conscience.⁹ 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.¹⁰

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.¹¹ 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 \$50.00.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to 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.¹⁵

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *L.S.*, 59 ECAB 350 (2008).

¹¹ 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(3) (September 2020).

¹² *Id.* at Chapter 6.400.4a(3) (September 2020).

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

¹⁴ *Supra* note 11 at Chapter 6.400.4c(3) (September 2020).

¹⁵ 20 C.F.R. § 10.436.

In the final overpayment decision dated October 24, 2022, OWCP indicated that as of the date of that decision no response had been received to the preliminary overpayment determination. The Board, however, finds that on October 21, 2022 OWCP received appellant's overpayment action request form and request for waiver of the overpayment. Appellant also submitted a Form OWCP-20 on October 21, 2022.

In the case of *William A. Couch*,¹⁶ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In its final overpayment decision dated October 24, 2022, OWCP failed to consider and address appellant's overpayment action request form and Form OWCP-20 received on October 21, 2022. As such, it failed to follow its procedures by properly considering all of the evidence of record.¹⁷

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.¹⁸ The Board thus finds that this case is not in posture for decision.¹⁹

On remand, OWCP shall consider and address all evidence of record regarding waiver and recovery of the overpayment. It shall thereafter issue a new preliminary overpayment determination. Following this, and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,705.43, for the periods July 18, 2020 through April 25, 2021 and September 27, 2021 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 further finds that the case is not in posture for decision regarding waiver of recovery of the overpayment.

¹⁶ 41 ECAB 548, 553 (1990); *see Order Remanding Case, B.P.*, Docket No. 22-0851 (issued September 15, 2022); *Order Remanding Case, K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

¹⁷ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. *Supra* note 11 at Chapter 2.1401.5b(2) (November 2012).

¹⁸ *See Order Remanding Case, W.C.*, Docket No. 22-0735 (issued November 29, 2022); *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Order Remanding Case C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 16.

¹⁹ In light of the Board's disposition of Issue 2, Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 2, 2023
Washington, DC

Alec J. Koromilas, 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