

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

D.C., Appellant	)	
	)	
and	)	<b>Docket No. 23-0796</b>
	)	<b>Issued: October 19, 2023</b>
<b>U.S. POSTAL SERVICE, NEW HYDE PARK</b>	)	
<b>CARRIER ANNEX POST OFFICE,</b>	)	
<b>New Hyde Park, NY, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 2, 2023 appellant filed a timely appeal from an April 24, 2023 merit 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.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$37,676.37, during the period October 1, 2019 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; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

---

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

## **FACTUAL HISTORY**

On June 24, 2015 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sprained his right knee and calf on that date when he fell in a hole while in the performance of duty. OWCP accepted his claim for right knee sprain and internal derangement of the right knee. It paid appellant wage-loss compensation.

Appellant filed several claims for compensation (Form CA-7) as of September 15, 2015 noting that his retirement system was the Federal Employees Retirement System (FERS).

On June 24, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On July 7, 2022 OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with FERS and without FERS from October 2019 through December 2021. Beginning October 2019, the SSA rate with FERS was \$2,269.20 and without FERS was \$1,063.00. Beginning December 2019, the SSA rate with FERS was \$2,305.50 and without FERS was \$1,080.00. Beginning December 2020, the SSA rate with FERS was \$2,335.40 and without FERS was \$1,094.00. Beginning December 2021, the SSA rate with FERS was \$2,473.10 and without FERS was \$1,737.90.

On July 21, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from October 1, 2019 through July 16, 2022 and computed a total overpayment amount of \$37,676.37. It determined that during the period October 1 through November 30, 2019, appellant received an overpayment in the amount of \$2,425.65. Beginning December 1, 2019 through November 30, 2020, he received an overpayment in the amount of \$14,786.80. Beginning December 1, 2020 through November 30, 2021, appellant received an overpayment in the amount of \$14,937.73. Beginning December 1, 2021 through July 16, 2022, he received an overpayment in the amount of \$5,526.12.

In a preliminary overpayment determination dated August 29, 2022, OWCP advised appellant that he received an overpayment of compensation in the amount of \$37,676.37 for the period October 1, 2019 through July 16, 2022 because his wage-loss compensation benefits had not been reduced by his SSA age-related retirement benefits attributable to his federal service. It also made a preliminary determination 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 payment 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 and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP further 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 precoupment hearing.

On September 13, 2022 appellant completed an overpayment action request form wherein he requested a precoupment hearing before an OWCP hearing representative. He requested waiver of recovery of the overpayment arguing that he "spent and committed funds in ways which [he] would not have done" and that he would suffer severe financial hardship repaying the debt.

In a completed Form OWCP-20, appellant reported monthly income totaling \$3,138.00 and monthly expenses totaling \$8,523.77; and assets totaling \$77,200.00, including a checking account balance of \$11,000.00; a savings account balance of \$1,200.00; and stocks and bonds valued at \$65,000.00.

A telephonic hearing before an OWCP hearing representative was held on January 13, 2023.

By decision dated April 24, 2023, OWCP's hearing representative found that appellant received an overpayment of compensation in the amount of \$37,676.37 for the period October 1, 2019 through July 16, 2022, for which he was without fault. He determined that, although appellant was without fault in the creation of the overpayment, the overpayment could not be waived as his reported assets exceeded the allowable asset base of \$10,300.00. OWCP's hearing representative found that there was no evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

### **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>2</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>3</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>4</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 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>5</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$37,676.37 during the period October 1, 2019 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.

---

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8116.

<sup>4</sup> 20 C.F.R. § 10.421(d); *see P.M.*, Docket No. 22-1059 (issued April 28, 2023); *T.T.*, Docket No. 20-1257 (issued July 29, 2022); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>5</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also L.E.*, Docket No. 22-0203 (issued March 17, 2023); *N.B.*, Docket No. 18-0795 (issued January 4, 2019). *See also S.R.*, Docket No. 21-0492 (issued March 23, 2022).

A claimant cannot receive both FECA compensation for wage loss and SSA age-related benefits attributable to federal service for the same period.<sup>6</sup> The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period October 1, 2019 through July 16, 2022.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided the SSA rate with FERS, and without FERS, for specific periods commencing October 1, 2019 through July 16, 2022. OWCP provided its calculations for each relevant period based on an SSA worksheet and calculated the amount of overpayment by determining the difference between the SSA amount with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, which resulted in a total overpayment of \$37,676.37.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2019 through July 16, 2022, and finds that an overpayment of compensation in the amount of \$37,676.37 was created.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment must be recovered 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>7</sup>

Recovery of an overpayment will defeat the purpose of FECA when 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>8</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>9</sup> Also, 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.<sup>10</sup> An individual's liquid assets include,

---

<sup>6</sup> 5 U.S.C. § 8116(d)(2); *see D.W.*, Docket No. 22-0493 (issued March 13, 2023); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

<sup>7</sup> 5 U.S.C. § 8129.

<sup>8</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>9</sup> *Id.* at Chapter 6.400.4a(3); *M.D. (M.D.)*, Docket No. 22-0189 (issued March 2, 2023); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>10</sup> *See id.* at Chapter 6.400.4a(2) (September 2020).

but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>11</sup>

Recovery of an overpayment is 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>

### 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>13</sup>

Appellant advised that he had assets totaling \$77,200.00. His stated assets exceed the resource base of \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent.<sup>14</sup> Because appellant has not met the second prong of the two-prong test, of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary to consider the first prong of the test, *i.e.*, whether he needs substantially all of his current income to meet ordinary and necessary living expenses.<sup>15</sup> He has not established that he was entitled to waiver on the basis of defeating the purpose of FECA.<sup>16</sup>

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>17</sup>

Because appellant has not established that recovery of the overpayment would 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.

---

<sup>11</sup> *Id.* at Chapter 6.400.4b(3).

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

<sup>13</sup> *Id.* at 10.436.

<sup>14</sup> *Supra* note 8.

<sup>15</sup> See *M.D. (M.D.)*, *supra* note 9; *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>16</sup> *N.B.*; Docket No. 20-0727 (issued January 26, 2021); *R.D.*, Docket No. 19-1598 (issued April 17, 2020).

<sup>17</sup> *M.D. (M.D.)*, *supra* note 9; *N.J.*, *supra* note 9; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$37,676.37, during the period October 1, 2019 through July 16, 2022, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 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