

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

R.G., Appellant)	
)	
and)	Docket No. 23-0595
)	Issued: September 21, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Capitol Heights, MD, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 14, 2023 appellant filed a timely appeal from a January 3, 2023 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 \$16,111.14 for the period September 1, 2019 through December 4, 2021, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 11, 1998 appellant, then a 46-year-old express mail driver, filed a traumatic injury claim (Form CA-1) alleging that he sustained back, head, neck and shoulder injuries on September 6, 1998 when he twisted his neck driving his employing establishment vehicle while in the performance of duty. OWCP initially accepted the claim for cervical strain and later expanded the acceptance of the claim to include aggravation of cervical myofascitis, myalgia, headache, common migraine without mention of intractable migraine, and abnormal involuntary movements.³ He was paid wage-loss compensation on the periodic rolls commencing June 16, 2002.

In a CA-7 form dated October 1, 2001, appellant indicated that his retirement system was the Federal Employees' Retirement System (FERS).

On November 12, 2021 OWCP forwarded a (FERS)/SSA dual benefits form to SSA.

On December 7, 2021 OWCP received a completed FERS/SSA dual benefits form wherein SSA calculated appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period September 2019 through December 2021. Beginning September 2019, the SSA rate with FERS was \$1,368.60 and without FERS was \$788.70. Beginning December 2019, the SSA rate with FERS was \$1,390.40 and without FERS was \$801.30. Beginning December 2020, the SSA rate with FERS was \$1,408.40 and without FERS was \$811.70. Beginning December 2021, the SSA rate with FERS was \$1,491.40 and without FERS was \$859.50.

On May 6, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from September 1, 2019 through December 1, 2021 and computed a total overpayment amount of \$16,111.14. It determined that during the period September 1 through November 30, 2019, appellant received an overpayment in the amount of \$1,739.70; beginning December 1, 2019 through November 30, 2020 he received an overpayment in the amount of \$7,108.04; beginning December 1, 2020 through November 30, 2021 he received an overpayment in the amount of \$7,180.07; beginning December 1 through 4, 2021 he received an overpayment in the amount of \$83.33.

In a preliminary overpayment determination dated May 6, 2022, OWCP advised appellant that he received an overpayment of compensation in the amount of \$16,111.14 for the period September 1, 2019 through December 4, 2021 because his wage-loss compensation benefits had not been reduced by his SSA age-related retirement benefits attributable to his federal service. It

² Docket No. 18-1251 (issued November 26, 2019).

³ Appellant had a previously accepted claim for a December 20, 1997 cervical sprain under OWCP File No. xxxxxx568. His claims have been administratively combined with the present claim, OWCP File No. xxxxxx087 serving as the master file.

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 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 prerecoupment hearing.

In an overpayment action request form dated June 2, 2021, appellant requested waiver of recovery of the overpayment and a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He also provided a completed signed Form OWCP-20, on which he reported total monthly income of \$1,321.00. Appellant also reported total monthly expenses of \$2,000.56, including \$500.00 for food, \$100.00 for clothing, and \$712.56 for utilities and other expenses. He also reported assets totaling \$13,237.00. Appellant provided supporting financial documentation, including copies of bills and credit card statements, but did not otherwise provide financial documentation supporting his reported income and assets.

A telephonic prerecoupment hearing was held on October 11, 2022.

Following the hearing, appellant submitted additional financial documentation including bank and credit union statements, as well as additional bills.

By decision dated January 3, 2023, OWCP's hearing representative found that appellant received an overpayment of compensation in the amount of \$16,111.14 for the period September 1, 2019 through December 4, 2021. She found him without fault, but denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deduction of \$500.00 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.⁴ 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.⁵

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to the employee's federal service.⁶ 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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$16,111.14, for the period September 1, 2019 through December 4, 2021, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

A claimant cannot receive both FECA compensation for wage loss and SSA age-related benefits attributable to federal service for the same period.⁸ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period September 1, 2019 through December 4, 2021. The Board finds that OWCP has established fact of overpayment.

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 September 1, 2019 through December 4, 2021. OWCP provided its calculations for each relevant period based on an SSA worksheet and calculated the amount of the 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 \$16,111.14.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2019 through December 4, 2021, and finds that an overpayment of compensation in the amount of \$16,111.14 was created.

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.⁹ The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹⁰

Recovery of an overpayment will defeat the purpose of FECA if 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

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

⁸ 5 U.S.C. § 8129(a)-(b).

⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁰ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP. 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.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

Additionally, 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 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.¹³

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. The information is also used to determine the repayment schedule, if necessary.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.¹⁶ As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷ In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet

¹¹ 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).

¹² *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹³ 20 C.F.R. § 10.437(a)(b).

¹⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁵ *Id.* at § 10.438(b).

¹⁶ *See D.W.*, Docket No. 22-0493 (issued March 13, 2023); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 issued October 26, 2015).

¹⁷ 5 U.S.C. § 8129.

current ordinary and necessary living expenses and that his assets do not exceed the established limit as determined by OWCP procedures.¹⁸

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet his ordinary living expenses. Appellant reported a monthly income of \$3,534.22, which exceeded his monthly expenses of \$2,768.01 by \$766.21. As his monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses.¹⁹ Furthermore, the Board notes that as appellant reported \$13,237.00 in assets in a Form OWCP-20 dated June 2, 2021, he had not met the standard for waiver of recovery of the overpayment because his assets exceeded the allowable resource base of \$10,300.00 for an individual with a spouse, such as appellant.²⁰

Additionally, the Board finds that the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit any evidence that he had relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt.²¹ Consequently, OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, 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 the error is discovered or her attention is called to the 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

The Board finds that OWCP gave due regard to the financial information appellant submitted. OWCP also properly considered the factors set forth in section 10.441 in setting the amount of the repayment from continuing compensation benefits to minimize hardship, while

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *D.W.*, *supra* note 16; *J.C.*, Docket No.19-0122 (issued June 11, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see also M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Supra* note 11 at Chapter 6.400.4c(3) (September 2020).

²¹ 20 C.F.R. § 10.437.

²² *Id.* at § 10.441(a); *A.F.*, *supra* note 9; *Donald R. Schueler*, 39 ECAB 1056 (1988).

liquidating the debt, as he had financial resources sufficient for more than ordinary needs.²³ Therefore, OWCP did not abuse its discretion in requiring recovery by deducting \$500.00 from his continuing compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$16,111.14 for the period September 1, 2019 through December 4, 2021, 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, and properly required recovery by deducting \$500.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²³ See *D.W.*, *supra* note 16; *N.J.*, Docket No. 19-1170 (issued January 10, 2020).