

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

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J.C., Appellant)	
)	
and)	Docket No. 24-0264
)	Issued: April 17, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, Temecula, CA,)	
Employer)	
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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 January 22, 2024 appellant filed a timely appeal from an August 11, 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 \$40,614.15, during the period December 1, 2021 through March 25, 2023, 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

¹ 5 U.S.C. § 8101 *et seq.*

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$640.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 26, 2006 appellant, then a 50-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2006, he injured his right knee. He explained that as he exited his patrol vehicle, he felt a pop in his right knee which caused extreme pain and immobility, while in the performance of duty. Appellant's supervisor noted on the claim form that appellant's retirement system was the Federal Employees Retirement System (FERS). On May 10, 2006 OWCP accepted the claim for right meniscus tear. On August 4, 2015 it expanded acceptance of the claim to include osteoarthritis. OWCP paid appellant wage-loss compensation on the supplemental and periodic rolls.²

On January 9, 2023 OWCP requested information from SSA as to whether an offset of compensation benefits was required.

On March 15, 2023 OWCP received from SSA a completed FERS/SSA dual benefits form, dated March 15, 2023, which reported appellant's SSA age-related retirement benefit rates with and without FERS. Beginning December 2021, the SSA rate with FERS was \$2,651.70, and without FERS was \$179.70; beginning January 2022, the SSA rate with FERS was \$2,694.10, and without FERS was \$180.80; beginning December 2022, the SSA rate with FERS was \$2,928.40, and without FERS was \$196.60; and beginning January 2023, the SSA rate with FERS was \$2,949.00, and without FERS was \$196.60.

OWCP completed a FERS offset overpayment calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$40,614.15. The worksheet indicated that appellant received the following overpayment amounts: \$2,526.33 for the period December 1 through 31, 2021; \$27,673.93 for the period January 1 through November 30, 2022; \$2,791.84 for the period December 1 through 31, 2022; and \$7,622.04 for the period January 1 through March 25, 2023.

On May 19, 2023 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$40,614.15 had been created for the period December 1, 2021 through March 25, 2023 because it had failed to reduce appellant's wage-loss compensation payments to offset his SSA age-related retirement benefits that were attributable to federal service. It incorporated the overpayment calculation worksheet and provided an explanation for each column in the overpayment computation. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised that he could request waiver of recovery of the overpayment. OWCP further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided an overpayment action request form and further

² Appellant received a schedule award from April 23 to August 21, 2023.

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 prerecouplement hearing.

On June 9, 2023 appellant requested waiver of recovery of the overpayment and that OWCP make a decision on the written evidence. In a completed Form OWCP-20, he provided information regarding his income and expenses. Appellant listed total monthly income of \$11,729.42, total monthly expenses of \$15,360.25, and total assets of \$14,486.00. He provided financial documentation regarding his claimed monthly expenses.

By decision dated August 11, 2023, OWCP finalized the May 19, 2023 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$40,614.15 for the period December 1, 2021 through March 25, 2023. It found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$640.00 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.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. When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.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 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 \$40,614.15, during the period December 1, 2021 through

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see 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).

March 25, 2023, 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 establishes that, while appellant was receiving compensation for wage loss under FECA, he concurrently received 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, during the period December 1, 2021 through March 25, 2023, 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 age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefit rates with FERS and without FERS for specific periods from December 1, 2021 through March 25, 2023. It provided its calculations for each relevant period based on the SSA dual benefits form which show that appellant received an overpayment in the amount of \$40,614.15. OWCP provided a detailed description of each column in the overpayment calculation. The Board thus finds that OWCP properly determined that appellant received prohibited dual benefits for the period December 1, 2021 through March 25, 2023, totaling \$40,614.15.

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 benefits, to meet current ordinary and necessary living expenses,¹¹ and the beneficiary's assets do

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 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 5; *L.J.*, *supra* note 5.

⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433; 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

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

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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

not exceed a specified amount as determined by OWCP.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.

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.¹⁶

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Appellant, on his Form OWCP-20, listed assets in the amount of \$14,486.00. As this exceeds the resource base of \$10,300.00 for an individual with a spouse or one dependent, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

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.¹⁸

¹² 20 C.F.R. § 10.436(a)-(b). For an individual with no eligible dependents the resource 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).

¹³ *Id.* at § 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 *Id.* at § 10.436.

¹⁷ *See supra* note 13; *see also D.C.*, Docket No. 19-0118 (issued January 15, 2020); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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

Section 10.441(a) of OWCP's regulations¹⁹ 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.”²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$640.00 from appellant's continuing compensation payments every 28 days.

OWCP gave due regard to the incomplete financial information submitted, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize the resulting hardship. The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$640.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$40,614.15, during the period December 1, 2021 through March 25, 2023, 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 and properly required recovery of the overpayment by deducting \$640.00 from appellant's continuing compensation payments every 28 days.

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2024
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