

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

_____)	
H.V., Appellant)	
)	
and)	Docket No. 24-0548
)	Issued: December 20, 2024
U.S. POSTAL SERVICE, CARDISS COLLINS)	
PROCESSING & DISTRIBUTION CENTER,)	
Chicago, IL, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On April 29, 2024 appellant, through counsel, filed a timely appeal from an April 1, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 \$29,697.55 for the period April 1, 2014 through

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

May 5, 2020, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits 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.

FACTUAL HISTORY

On April 14, 2010 appellant then a 58-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2010 he injured his back when driving over speed bumps and potholes while in the performance of duty. OWCP accepted appellant's claim for sprain of the back, lumbar region; sprain of the back, thoracic region; and thoracic or lumbosacral neuritis or radiculitis. It paid him wage-loss compensation on the supplemental rolls, effective July 13, 2010, and on the periodic rolls, effective April 10, 2011. OWCP subsequently expanded the acceptance of appellant's claim to include herniated discs at L4-5 and L5-S1, and an aggravation of bilateral foraminal stenosis.

On May 9, 2018 OWCP requested that SSA complete a Federal Employees Retirement System (FERS)/SSA dual benefits form to determine whether appellant received a prohibited dual benefit commencing March 1, 2014.

On May 29, 2018, OWCP received a completed FERS/SSA dual benefits form dated May 23, 2018 wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning April 2014, the SSA rate with FERS was \$1,411.20 and without FERS was \$827.70. Beginning December 2014 and December 2015, the SSA rate with FERS was \$1,435.20 and without FERS was \$841.80. Beginning December 2016, the SSA rate with FERS was \$1,439.50 and without FERS was \$844.20. Beginning December 2017, the SSA rate with FERS was \$1,468.20 and without FERS was \$861.10.

In a letter dated June 1, 2018, OWCP advised appellant that it had been determined that he had been receiving FERS/SSA dual benefits; therefore, his FECA benefits would be offset by \$560.40 every 28-day payment cycle beginning May 27, 2018, for a net wage-loss compensation payment of \$2,494.46.

On July 12, 2018, OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$29,699.69 for the period April 1, 2014 through May 26, 2018, because he concurrently received FECA wage-loss compensation and SSA age-related retirement 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 recovery 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 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 precouplement hearing.

On July 20, 2018, appellant submitted an overpayment action request form, requesting a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. Appellant also submitted a completed Form OWCP-20 dated August 6, 2018.

On April 10, 2019, OWCP requested that SSA complete another FERS/SSA dual benefits form.

OWCP received a completed FERS/SSA dual benefits form dated April 12, 2019, wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning December 2018, the SSA rate with FERS was \$1,509.30 and without FERS was \$884.80.³

On April 15, 2020 and January 11, 2021, OWCP requested that SSA complete another FERS/SSA dual benefits form. On February 22, 2021, OWCP received a completed FERS/SSA dual benefits form, of even date, wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning April 2014, the SSA rate with FERS was \$1,411.00 and without FERS was \$828.00. Beginning December 2014, the SSA rate with FERS was \$1,435.00 and without FERS was \$842.00. Beginning July 2015, the SSA rate with FERS was \$1,434.90 and without FERS was \$841.90. Beginning December 2015, the SSA rate with FERS was \$1,434.80 and without FERS was \$841.80. Beginning December 2016, the SSA rate with FERS was \$1,439.00 and without FERS was \$844.00. Beginning December 2017, the SSA rate with FERS was \$1,468.00 and without FERS was \$861.00. Beginning December 2018, the SSA rate with FERS was \$1,508.50 and without FERS was \$884.50. Beginning December 2019, the SSA rate with FERS was \$1,532.60 and without FERS was \$898.60. Beginning December 2020, the SSA rate with FERS was \$1,552.50 and without FERS was \$910.50.

On March 16, 2021 OWCP requested that SSA complete another FERS/SSA dual benefits form, noting that on May 23, 2018, April 12, 2019, and February 22, 2021 SSA provided conflicting figures. It requested clarification with regard to the correct figures.

On May 18, 2021, SSA clarified appellant's SSA age-related retirement benefit rates for the period April 1, 2014 through May 22, 2021, noting that the figures provided on February 22, 2021 were correct.

On October 27, 2022, the employing establishment requested that OWCP provide a status update on the preliminary overpayment determination made on July 12, 2018, in the amount of \$29,699.69. It noted that no payments have been made on this debt.

On November 21, 2022, OWCP informed the employing establishment that a preliminary overpayment determination was made on July 12, 2018, declaring an overpayment of \$29,699.69. It noted that the record revealed that appellant requested a prerecoumment hearing with a representative of OWCP's Branch of Hearings and Review; however, the request was not

³ On May 1, 2019, SSA noted that it had been deducting \$576.09 for a FERS offset but this figure had changed and the correct deduction should have been \$576.46, effective December 1, 2018. An overlapping overpayment was calculated on May 1, 2019 that covered the period of December 1, 2018 through April 27, 2019 and totaled \$37.82.

processed and no hearing was held. OWCP indicated that the prerecoupment hearing request was now being reviewed.

On November 29, 2022, OWCP requested that appellant submit an updated Form OWCP-20. 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 updated income and expenses.

On December 16, 2022, following a preliminary review, OWCP's hearing representative set aside the July 12, 2018 preliminary overpayment determination. The hearing representative remanded the case for further proceedings. The hearing representative instructed OWCP to obtain further clarification from SSA regarding the differing rates with and without FERS provided on May 18, 2021. The hearing representative noted that the SSA rates with FERS and the rates without FERS had decreased from December 2014 through July 2015 and from July through December 2015. The hearing representative further noted that this was not typical and requested that SSA verify the figures and provide an explanation of the discrepancy in rates.

On January 6, 2023, OWCP requested additional information from SSA regarding the calculation of appellant's FECA offset based on his federal earnings. It noted that on December 16, 2022 a representative of OWCP's Branch of Hearings and Review remanded the case to clarify the rates provided by SSA before taking further action on the overpayment. OWCP explained that the SSA age-related retirement benefit rates with FERS and without FERS had decreased from December 2014 through July 2015, and from July through December 2015, which was not typical. It requested that SSA complete another FERS/SSA dual benefits form and explain the discrepancies in the figures provided by SSA on May 23, 2018, April 12, 2019, and February 22, 2021.

OWCP subsequently received a completed FERS/SSA dual benefits form dated March 20, 2023, wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning April 2014, the SSA rate with FERS was \$1,411.20 and without FERS was \$828.00. Beginning December 2014, July 2015, and December 2015, the SSA rate with FERS was \$1,435.20 and without FERS was \$842.10. Beginning December 2016, the SSA rate with FERS was \$1,439.50 and without FERS was \$844.50. Beginning December 2017, the SSA rate with FERS was \$1,468.20 and without FERS was \$861.40. Beginning December 2018, the SSA rate with FERS was \$1,509.30 and without FERS was \$885.40. Beginning December 2019, the SSA rate with FERS was \$1,533.50 and without FERS was \$899.50. Beginning December 2020, the SSA rate with FERS was \$1,553.40 and without FERS was \$911.20. Beginning December 2021, the SSA rate with FERS was \$1,645.00 and without FERS was \$964.90. Beginning December 2022, the SSA rate with FERS was \$1,788.10 and without FERS was \$1,048.80.

On June 26, 2023, OWCP again requested additional information from SSA regarding the calculation of appellant's FECA offset based on his federal earnings. It noted that no response was received to its January 6, 2023 letter requesting clarification, and indicated that SSA had provided four different sets of rates without an explanation for the discrepancies between the rates.

On July 11, 2023, OWCP received a response from SSA indicating "Please use the rates from March 20, 2023."

On July 17, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained its calculation of appellant's overpayment from April 1, 2014 through May 5, 2020 totaling \$29,697.55. It explained that from April 1, 2014 through May 5, 2020, only \$14,536.81 was deducted from appellant's benefits; however, \$44,234.36 should have been deducted for this period, resulting in an overpayment of compensation in the amount of \$29,697.55.

On July 17, 2023, OWCP issued a revised preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$29,697.55, for the period April 1, 2014 through May 5, 2020, because he concurrently received FECA wage-loss compensation and SSA age-related retirement 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 Form OWCP-20 to determine a reasonable recovery 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 to support his reported income and expenses. Additionally, OWCP provided an overpayment action request form and 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.

On July 24, 2023, appellant submitted an overpayment action request form and requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 2, 2023. An updated Form OWCP-20 was not received.

By decision dated April 1, 2024, OWCP's hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$29,697.55, for the period April 1, 2014 through May 5, 2020, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, 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 noting that he had not submitted an updated overpayment questionnaire listing his income and expenses. OWCP required recovery of the overpayment by payment in full.

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 retirement benefits that are

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

attributable to the employee's federal service.⁶ 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 age-related retirement benefits 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective April 10, 2011. Appellant received SSA age-related retirement benefits beginning April 1, 2014. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service without an appropriate offset.⁸ The information provided by SSA established that a portion of appellant's benefits were attributable to his federal service. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.⁹

The Board further finds, however, that this case is not in posture for decision regarding the period and amount of the overpayment.

On May 29, 2018, OWCP received a completed FERS/SSA dual benefits form dated May 23, 2018 wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning April 2014, the SSA rate with FERS was \$1,411.20 and without FERS was \$827.70. Beginning December 2014 and December 2015, the SSA rate with FERS was \$1,435.20 and without FERS was \$841.80. Beginning December 2016, the SSA rate with FERS was \$1,439.50 and without FERS was \$844.20. Beginning December 2017, the SSA rate with FERS was \$1,468.20 and without FERS was \$861.10.

OWCP received a completed FERS/SSA dual benefits form dated April 12, 2019 wherein SSA reported appellant's age-related retirement benefit rates with FERS and without FERS. Beginning December 2018, the SSA rate with FERS was \$1,509.30 and without FERS was \$884.80.

On April 15, 2020 and January 11, 2021, OWCP requested additional information from SSA to calculate FECA offset based on the claimant's federal earnings. On February 22, 2021, OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported as follows. Beginning April 2014, the SSA rate with FERS was \$1,411.00 and without FERS was \$828.00.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

⁸ 20 C.F.R. § 10.421(d); *id.*; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 6.

⁹ *Id.*

Beginning December 2014, the SSA rate with FERS was \$1,435.00 and without FERS was \$842.00. Beginning July 2015, the SSA rate with FERS was \$1,434.90 and without FERS was \$841.90. Beginning December 2015, the SSA rate with FERS was \$1,434.80 and without FERS was \$841.80. Beginning December 2016, the SSA rate with FERS was \$1,439.00 and without FERS was \$844.00. Beginning December 2017, the SSA rate with FERS was \$1,468.00 and without FERS was \$861.00. Beginning December 2018, the SSA rate with FERS was \$1,508.50 and without FERS was \$884.50. Beginning December 2019, the SSA rate with FERS was \$1,532.60 and without FERS was \$898.60. Beginning December 2020, the SSA rate with FERS was \$1,552.50 and without FERS was \$910.50.

On March 16, 2021, OWCP informed SSA that the figures provided on February 22, 2021 conflicted with the figures previously provided on May 23, 2018 and April 12, 2019.

On May 18, 2021, SSA clarified appellant's SSA age-related retirement benefit rates for the period April 1, 2014 through May 22, 2021, noting that the figures provided on February 22, 2021 were correct.

On January 6, 2023, OWCP again requested additional information from SSA to calculate FECA offset based on the claimant's federal earnings. It noted that on December 16, 2022 a representative of OWCP's Branch of Hearings and Review remanded the case to clarify the rates provided by SSA before taking further action on the overpayment. OWCP requested that SSA complete another FERS/SSA dual benefits form and explain the discrepancies in the figures provided by SSA on May 23, 2018, April 12, 2019, and February 22, 2021.

OWCP subsequently received another completed FERS/SSA dual benefits form dated March 20, 2023, wherein SSA reported as follows. Beginning April 2014, the SSA rate with FERS was \$1,411.20 and without FERS was \$828.00. Beginning December 2014, July 2015, and December 2015, the SSA rate with FERS was \$1,435.20 and without FERS was \$842.10. Beginning December 2016, the SSA rate with FERS was \$1,439.50 and without FERS was \$844.50. Beginning December 2017, the SSA rate with FERS was \$1,468.20 and without FERS was \$861.40. Beginning December 2018, the SSA rate with FERS was \$1,509.30 and without FERS was \$885.40. Beginning December 2019, the SSA rate with FERS was \$1,533.50 and without FERS was \$899.50. Beginning December 2020, the SSA rate with FERS was \$1,553.40 and without FERS was \$911.20. Beginning December 2021, the SSA rate with FERS was \$1,645.00 and without FERS was \$964.90. Beginning December 2022, the SSA rate with FERS was \$1,788.10 and without FERS was \$1,048.80. These figures were used in the final overpayment decision of April 1, 2024, finding an overpayment for the period April 1, 2014 through May 5, 2020 in the amount of \$29,697.55. OWCP did not, however, explain why it had determined that the rates provided by SSA on March 20, 2023 were the correct rates on which to base the overpayment. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹⁰

The Board shall, therefore, remand the case for OWCP to obtain an explanation from SSA as to why the March 20, 2023 dual benefits form represented the correct rates. OWCP shall then determine the exact period and amount of the overpayment of compensation. It shall thereafter issue a new preliminary overpayment determination, with an overpayment action request form, a

¹⁰ *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

Form OWCP-20, and instructions for appellant to provide updated supporting financial information.¹¹ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that appellant received an overpayment of compensation, for which he is without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. However, the case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 20, 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

¹¹ See *L.K.*, Docket No. 20-0416 (issued November 12, 2020).

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.