

the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$923.08 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

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

On April 28, 2003 appellant, then a 44-year-old cemetery caretaker, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained pain in his stomach and back after lifting a heavy base while in the performance of duty. OWCP accepted the claim for lumbar sprain and ventral hernia, and subsequently expanded the acceptance to include major depression. It paid appellant wage-loss compensation on the supplemental rolls commencing July 28, 2003, and on the periodic rolls commencing June 11, 2006. The case record indicates that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

On January 4, 2022 OWCP provided SSA with a FERS/SSA dual benefits form requesting information concerning a potential overpayment.

On September 23, 2022 SSA completed the dual benefits form, reporting appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset as follows: beginning December 2013, the SSA rate with FERS was \$820.80 and without FERS was \$242.90; beginning December 2014, the SSA rate with FERS was \$834.70 and without FERS was \$247.00; beginning December 2015, the SSA rate with FERS was \$834.70 and without FERS was \$247.00; beginning December 2016, the SSA rate with FERS was \$837.20 and without FERS was \$247.70; beginning December 2017, the SSA rate with FERS was \$853.90 and without FERS was \$252.60; beginning December 2018, the SSA rate with FERS was \$877.80 and without FERS was \$259.60; beginning December 2019, the SSA rate with FERS was \$891.80 and without FERS was \$263.70; beginning December 2020, the SSA rate with FERS was \$903.30 and without FERS was \$267.10; and beginning December 2021, the SSA rate with FERS was \$956.50 and without FERS was \$282.80.

In a letter dated October 25, 2022, OWCP informed appellant that the portion of SSA age-related retirement benefits attributable to his federal service would be deducted from his 28-day periodic rolls compensation payments. It noted that his new net compensation payment every 28 days would be \$2,096.86.

On December 12, 2022 OWCP prepared a FERS offset overpayment calculation worksheet which explained its calculation of appellant's SSA offset overpayment from December 1, 2013 through October 8, 2022 and computed a total overpayment in the amount of \$65,047.89. It found that: for the period December 1, 2013 through November 30, 2014, appellant received an overpayment of \$6,953.85; for the period December 1, 2014 through November 30, 2015, appellant received an overpayment of \$7,071.77; for the period December 1, 2015 through November 30, 2016, appellant received an overpayment of \$7,091.15; for the period December 1,

² Docket No. 05-200 (issued April 7, 2005); Docket No. 05-1952 (issued December 22, 2005).

2016 through November 30, 2017, appellant received an overpayment of \$7,093.43; for the period December 1, 2017 through November 30, 2018, appellant received an overpayment of \$7,235.472; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment of \$7,438.78; for the period December 1, 2019 through November 30, 2020, appellant received an overpayment of \$7,578.61; for the period December 1, 2020 through November 30, 2021, appellant received an overpayment of \$7,655.37; and for the period December 1, 2021 through October 8, 2022, appellant received an overpayment of \$6,929.49.

On December 13, 2022 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$65,047.89 for the period December 1, 2013 through October 8, 2022, because it had failed to reduce his wage-loss compensation benefits by the portion of his SSA age-related retirement benefits that were attributable to federal service. 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 supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. 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 prerecoumment hearing.

On January 3, 2023 appellant requested waiver of recovery of the overpayment and submitted a partially-completed Form OWCP-20. No supporting financial documentation was received. In a decision dated August 23, 2023, OWCP's hearing representative finalized the December 13, 2022 preliminary overpayment determination.³ The hearing representative denied waiver and required recovery of the overpayment by deducting \$923.08 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 that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are

³ Appellant initially requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review, which he subsequently changed to a request for a final decision based on the written evidence.

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 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$65,047.69 for the period December 1, 2013 through October 8, 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.

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 December 1, 2013 through October 8, 2022. 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 December 1, 2013 through October 8, 2022. 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 \$65,047.69.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period December 1, 2013 through October 8, 2021, and finds that an overpayment of compensation in the amount of \$65,047.69 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

⁶ 20 C.F.R. § 10.421(d); *see M.H.*, Docket No. 21-0356 (issued September 22, 2023); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁸ 20 C.F.R. § 10.421(d); *R.G.*, Docket No. 23-0595 (issued September 21, 2023).

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

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, 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.

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment must be considered, and repayment is still required unless adjustment

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

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 *R.G., supra* note 8; *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).

or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶

In its December 13, 2022 preliminary overpayment determination, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. Appellant, however, provided only a partially-completed Form OWCP-20 and did not submit any supporting financial documentation.

As such, appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because he has not shown, that he would experience severe financial hardship in attempting to repay the debt, that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.¹⁷ Accordingly, as he did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

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

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 improperly required recovery of the overpayment by deducting \$923.08 from appellant's continuing compensation payments every 28 days.

¹⁶ *Id.* at § 10.436.

¹⁷ *L.E.*, Docket No 22-0203 (issued March 17, 2023); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁸ 20 C.F.R. § 10.441; *see M.H.*, *supra* note 6; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see M.H.*, *supra* note 6; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

Appellant provided only a partially-completed Form OWCP-20 and did not provide any supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²³

OWCP advised appellant that his new net FECA wage-loss compensation payments would be \$2,096.86, effective February 2, 2020. The Board, however, notes that 25 percent of \$2,096.86 is \$524.22. The Board therefore finds that OWCP improperly required recovery of the overpayment by deducting \$923.08 from appellant's continuing compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$65,047.69 for the period December 1, 2013 through October 8, 2022, for which he was without fault, because 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, but improperly required recovery by deducting \$923.08 from his continuing compensation payments every 28 days.

²¹ *Id.* at § 10.438(a).

²² See *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 11 at Chapter 6.300.2 (September 2020). 20 C.F.R. § 10.436; *supra* note 11 at Chapter 6.400.4a(2).

²³ See *supra* note 11 at Chapter 6.500.8c(1) (September 2018); *F.B.*, Docket No. 21-0680 (issued February 23, 2022); *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: February 1, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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