

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

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C.K., Appellant)	
)	
and)	Docket No. 23-0880
)	Issued: January 12, 2024
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF RECLAMATION, Socorro, NM, 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 May 11, 2023 appellant filed a timely appeal from an April 21, 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 \$33,433.61 during the period June 1, 2013 through January 2, 2021, 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 overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$760.00 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 7, 2003 appellant, then a 56-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injuries to his right shoulder and bicep when climbing down equipment while in the performance of duty. He noted that his retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for right shoulder sprain/strain; right rotator cuff sprain; and disorder of the bursae and tendons in the right shoulder. It paid appellant wage-loss compensation on the supplemental rolls effective August 6, 2003, and on the periodic rolls effective September 7, 2003.

On December 3, 2020 OWCP contacted SSA to obtain information as to whether an offset of compensation benefits was required.

On December 12, 2020 OWCP received from SSA a completed FERS/SSA dual benefits form, dated December 12, 2020, which reported appellant's SSA age-related retirement benefit rates with and without a FERS offset as follows: beginning June 2013, the SSA rate with FERS was \$2,009.20 and without FERS was \$1,660.50; beginning December 2013, the SSA rate with FERS was \$2,039.30 and without FERS was \$1,685.40; beginning December 2014, the SSA rate with FERS was \$2,073.90 and without FERS was \$1,714.00; beginning December 2015, the SSA rate with FERS was \$2,073.90 and without FERS was \$1,714.00; beginning December 2016, the SSA rate with FERS was \$2,080.10 and without FERS was \$1,719.10; beginning December 2017, the SSA rate with FERS was \$2,121.70 and without FERS was \$1,753.40; beginning December 2018, the SSA rate with FERS was \$2,181.10 and without FERS was \$1,802.40; beginning December 2019, the SSA rate with FERS was \$2,215.90 and without FERS was \$1,831.20; and beginning December 2020, the SSA rate with FERS was \$2,244.70 and without FERS was \$1,855.00.

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 \$33,433.61. The worksheet indicated that appellant received the following overpayment amounts: from June 1 through November 30, 2013, \$2,103.70; from December 1, 2013 through November 30, 2014, \$4,258.47; from December 1, 2014 through November 30, 2015, \$4,330.66; from December 1, 2015 through November 30, 2016, \$4,342.53; from December 1, 2016 through November 30, 2017, \$4,343.90; from December 1, 2017 through November 30, 2018, \$4,431.74; from December 1, 2018 through November 30, 2019, \$4,556.88; from December 1, 2019 through November 30, 2020, \$4,641.76; and from December 1, 2020 through January 2, 2021, \$423.96.

On November 18, 2021, OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$33,433.61, had been created because it had failed to reduce appellant's wage-loss compensation payments for the period June 1, 2013 through January 2, 2021, to offset his SSA age-related retirement benefits that were attributable to federal service. OWCP attached its FERS offset overpayment calculation worksheet. It determined that appellant was at fault in the creation of the overpayment because he made an incorrect statement as to a material fact he knew or should have known to be incorrect. OWCP requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method. It 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 December 5, 2021 appellant requested a prerecoupment hearing and provided a partially completed Form OWCP-20. He contested the finding of fault, noting that he did not know what he did wrong. Appellant explained that in 2021, his claims examiner notified him over the telephone that he was being overpaid and that an overpayment would be taken from his check. He noted that he did not understand why it took OWCP nine years to catch a mistake.

Following a March 29, 2022 preliminary review, an OWCP hearing representative found that the case was not in posture for decision. She found that OWCP did not fully explain how the overpayment amount was calculated. The hearing representative also found that appellant was without fault in the creation of the overpayment. She remanded the case for OWCP to explain how the overpayment was calculated and to consider waiver of recovery of the overpayment.

On April 12, 2022 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$33,433.61, had been created because it had failed to reduce appellant's wage-loss compensation payments for the period June 1, 2013 through January 2, 2021, to offset his SSA age-related retirement benefits that were attributable to his federal service. OWCP incorporated the overpayment calculation worksheet and explained how SSA paid monthly benefits and how OWCP converted its monthly payments to a 28-day cycle. It determined that he was without fault in the creation of the overpayment because the evidence did not support that he was aware that the receipt of full SSA age-related retirement benefits concurrent with the disability/wage-loss compensation would result in an overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable repayment method and advised that he could request waiver of recovery of the overpayment. It again requested that he provide supporting financial documentation. Additionally, OWCP 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 April 30, 2022 appellant requested a prerecoupment hearing.

Following a June 24, 2022 preliminary review, an OWCP hearing representative found that OWCP failed to sufficiently explain how the overpayment was calculated. The hearing representative remanded the case for issuance of a new preliminary overpayment determination with a full and detailed explanation of how the overpayment was calculated.

On September 1, 2022 OWCP issued a preliminary overpayment determination, finding that, an overpayment of compensation in the amount of \$33,433.61, had been created because it had failed to reduce appellant's wage-loss compensation payments for the period June 1, 2013 through January 2, 2021, to offset his SSA age-related retirement benefits that were attributable to federal service. It again incorporated the worksheet which noted the overpayment for each effective date and subsequent number of days. OWCP also provided an explanation for each column in the overpayment computation. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable repayment method, and advised 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, pay slips, and any other records to 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 prerecoumment hearing.

On September 18, 2022 appellant requested a prerecoumment hearing. He asserted that repayment would be a hardship and burden on him. Appellant did not provide a completed Form OWCP-20.

A telephonic hearing was held on February 16, 2023. Appellant argued that he was without fault. He did not provide specific financial information other than to note that he had more than \$6,000.00 in cash because he was always taught to have six months in security in case of emergency. No further financial information was provided.

By decision dated April 21, 2023, OWCP's hearing representative finalized the September 1, 2022 preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$33,433.61 for the period June 1, 2013 through January 2, 2021. She found that OWCP had documented the case record and that the preliminary overpayment determination had now sufficiently explained the FERS offset calculation. The hearing representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as he had not submitted evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. She required recovery of the overpayment by deducting \$760.00 every 28 days from appellant's continuing compensation payments, which she explained represented approximately 25 percent of appellant's continuing 28-day compensation.

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.² 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.³

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.⁴ 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

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,433.61, for the period June 1, 2013 through January 2, 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.⁶

The evidence of record indicates 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.⁷ The information provided by SSA established that, during the period June 1, 2013 through January 2, 2021, 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 June 1, 2013 through January 2, 2021. OWCP 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 \$33,433.61. It 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 June 1, 2013 through January 2, 2021, totaling \$33,433.61.

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.⁸ 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.⁹

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *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).

⁷ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 4; *L.J.*, *supra* note 4.

⁸ 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).

⁹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

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.¹⁰ 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.¹¹

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.¹² 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.¹³

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.¹⁴

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 because he did not provide any necessary supporting financial information. In its preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. Appellant, however, did not submit a completed Form OWCP-20, nor did he provide any supporting financial documentation. He noted that he had more than \$6,000.00 in cash on hand. As he did not submit the information required under section 10.438 of OWCP's

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ *Id.* at § 10.438(b).

¹⁴ *Id.* at § 10.436.

regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁵

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.¹⁶

Section 10.441(a) of OWCP's regulations¹⁷ 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.”¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$760.00 from appellant's continuing compensation payments every 28 days.

The record reflects that appellant received FECA compensation benefits on the periodic rolls in the net amount of \$3,042.45 every 28 days, as of the April 21, 2023 decision. Appellant did not submit a completed Form OWCP-20 or provide sufficient financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁹ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ As appellant did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$760.00 from his continuing compensation payments every 28 days.²¹

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

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

¹⁷ *Id.* at § 10.441(a).

¹⁸ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

¹⁹ 20 C.F.R. § 10.438(a); *see also F.L.*, Docket No. 23-1030 (issued December 11, 2023).

²⁰ *See F.L., id.; A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *see also supra* note 10 at Chapter 6.500.2 (September 2018).

²¹ *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B., supra* note 15.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,433.61, for the period June 1, 2013 through January 2, 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. The Board also finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$760.00 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 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