

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

A.N., Appellant)	
)	
and)	Docket No. 23-0983
)	Issued: January 10, 2024
U.S. POSTAL SERVICE, BRIARGATE)	
STATION, Colorado Springs, CO, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2023 appellant filed a timely appeal from a March 14, 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 \$3,995.85 for the period February 1 through November 5, 2022, 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 6, 2002 appellant, then a 46-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2002 he twisted his spine when unloading heavy parcels from his vehicle while in the performance of duty. OWCP accepted the claim for L4-5 disc protrusion and right compression of spinal nerve root. It initially paid appellant intermittently on the supplemental and periodic rolls as of March 12, 2003. OWCP paid him wage-loss compensation on the periodic rolls continuously commencing December 20, 2009.

On July 28, 2022 OWCP forwarded a FERS/SSA Dual Benefits Calculation form to SSA to obtain information as to whether an offset of SSA age-related retirement benefits and FECA wage-loss compensation was required.

The form was completed by SSA and received by OWCP on August 15, 2022. SSA reported appellant's SSA age-related retirement benefit rates with and without FERS for the period February through July 2022. Beginning February 2022 his SSA rate with FERS was \$1,307.50 and without FERS was \$871.50.

On November 21, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it found a total overpayment of compensation for the period February 1 through November 5, 2022 in the amount of \$3,995.85.

In a December 21, 2022 preliminary overpayment determination, OWCP advised appellant that he had received an overpayment of compensation in the amount of \$3,995.85 because he had received SSA age-related retirement benefits attributable to his federal service, as well as FECA benefits during the period February 1 through November 5, 2022. It found 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 rate of recovery, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide financial documentation, including copies of income tax returns, bank account statements, bills, and canceled checks, pay slips, and other records in order to support income, expenses, and assets. Additionally, OWCP provided an overpayment action request form and 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 January 17, 2023 appellant requested waiver of the overpayment and that OWCP make a decision based on the written evidence. He attached a completed overpayment recovery questionnaire (Form OWCP-20) and supporting documentation. Appellant listed monthly income of \$5,008.48 which included SSA benefits of \$1,421.00, \$815.73 in spouse's annuity benefits, and FECA benefits of \$2,771.75. He listed total monthly expenses of \$5,750.00, including \$1,500.00 in rent/mortgage, \$1,450.00 for food, \$700.00 for clothing, \$850.00 in utilities, \$500.00 for loan payments, and \$750.00 for other expenses. Appellant listed total assets of \$6,896.00, including \$240.00 in cash on hand, \$4,116.00 in checking account balance, and \$2,540.00 in stocks and bonds. He also noted that he owned 3.25 acres of property worth \$95,000.00. Financial documentation included a copy of his 2022 federal income tax return, bank statements covering the period November 18, 2022 through February 16, 2023, utilities statements, a Thrift Savings Plan annual account statement, consumer credit card statements, and a medical bill.

By decision dated March 14, 2023, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,995.85 for the period February 1 through November 5, 2022, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It provided the calculation that, during the 278 days between February 1 and November 5, 2022, he had received an overpayment of \$373.71 from February 1 to 26, 2022 and overpayments of \$402.46 every 28 days between February 27 and November 5, 2022. OWCP found that appellant was without fault in the creation of the overpayment but, denied waiver of recovery because the evidence of record did not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It determined that his monthly income of \$5,222.72, based on his SSA benefits of \$1,421.00, his spouse's annuity of \$812.73 (per January bank statement), and his FECA monthly benefits of \$2,988.99, exceeded his monthly allowable expenses of \$3,966.00 by more than \$1,000.000, based on national standards and verified expenses. OWCP noted that one of appellant's credit card billing statements appeared duplicative of food and utility expenses. It also found that he had assets of \$6,896.00 in cash on hand/checking and savings balances and \$95,000.00 worth of land. OWCP required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments, every 28 days, beginning March 26, 2023.

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.³

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 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 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,995.85, for the period February 1 through November 5, 2022,

² *Id.* at § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see M.F.*, Docket No. 23-0028 (issued July 12, 2023); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls effective December 20, 2009. Appellant received SSA age-related retirement benefits beginning February 1, 2022. As noted, a claimant cannot receive concurrent FECA wage-loss compensation benefits and SSA age-related retirement benefits attributable to federal service for the same period.⁶ 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.⁷

To determine the amount of the overpayment, the portion of the SSA 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 benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for the period beginning February 2022. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$3,995.85.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits in the amount of \$3,995.85 for the period February 1 through November 5, 2022.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸

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.⁹ An individual is deemed to meet current

⁶ 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 4.

⁷ *Id.*

⁸ 5 U.S.C. § 8129.

⁹ 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).

ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁰

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

Section 10.438 of OWCP's regulations provides 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

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 still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹³ It considered his financial information to determine if recovery of the overpayment would defeat the purpose of FECA.

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet ordinary living expenses. OWCP found that, after its review of the documents of record, he had total current monthly income of \$5,222.72 which included \$2,988.99 in FECA benefits, \$812.73 spousal annuity (per the January bank statement), and \$1,421.00 in SSA benefits. Appellant also reported monthly expenses of \$1,500.00 for his mortgage, \$1,450.00 for food, \$700.00 for clothing, \$850.00 for utilities, and \$7,502.00 for other expenses. He noted monthly payments on various bank credit cards of \$250.00, \$250.00, \$29.00, and \$25.00. OWCP, however, reduced appellant's monthly food expenses to \$903.00 based on 2022 Allowable Living Expenses National Standards. It also determined that statements and financial documentation confirmed the average for utilities the minimum consumer credit card payments. Thus, the Board finds that OWCP properly determined the amount of his new household monthly expenses totaled \$3,966.00. As appellant's total monthly expenses exceeded his monthly income and exceeds his ordinary and necessary living expenses by more than \$50.00, the Board finds that OWCP properly determined that he did not need substantially all of his income

¹⁰ *Id.* at Chapter 6.400.4.a(3); *see also M.F.*, *supra* note 4; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹¹ 20 C.F.R. § 10.437(a)(b).

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

¹³ *Id.* at § 10.436; *see also A.V.*, Docket No. 22-1234 (issued May 4, 2023).

for ordinary and necessary living expenses.¹⁴ The Board also notes that his land valued at \$95,000.00 exceeds that allowable asset base of \$10,300.00 for an individual with a spouse.¹⁵

Appellant has also not demonstrated that recovery of the overpayment would be against equity and good conscience. He has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.¹⁶

Because appellant has not established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁷

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part 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 soon as the error is discovered or his 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.¹⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

In setting the recovery rate at \$300.00, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.¹⁹ Thus, it did not abuse its discretion in setting the rate of

¹⁴ See *J.R.*, Docket No. 20-1094 (issued January 5, 2021); *R.F.*, Docket No. 20-0159 (issued October 15, 2020); *M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹⁵ *Robert E. Wenzholz*, Docket No. 86-1260 (issued December 24, 1986). The Board found that appellant's land valued at \$28,000.00 exceeded the allowable asset base.

¹⁶ *P.S.*, Docket No 21-0859 (issued May 12, 2023); *N.J.*, *supra* note 10; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

¹⁷ *P.S.*, *id.*; *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

¹⁸ 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

¹⁹ *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

recovery.²⁰ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$300.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$3,995.85 for the period February 1 through November 5, 2022, 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 of the overpayment by deducting \$300.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *P.S., id.*; *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).