

March 25, 2023, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$612.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On March 22, 2021 appellant, then a 68-year-old laborer/custodian, filed an occupational disease claim (Form CA-2) alleging that he sustained left shoulder osteoarthritis causally related to factors of his federal employment including repetitive motions of lifting, pulling, pushing, mopping, sweeping, lifting, and shoveling. He noted that he first became aware of his condition on April 13, 2019 and realized its relation to factors of his federal employment on May 21, 2020. On the reverse side of the Form CA-2, it was noted that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). Appellant continued to work at that time, but stopped work on April 12, 2022 and did not return. OWCP paid him wage-loss compensation on the supplemental rolls from April 9 through December 2, 2022, from December 17 through 20, 2022, and from January 1 through 28, 2023. He received wage-loss compensation on the periodic rolls, effective January 29, 2023.

On January 9, 2023 OWCP forwarded a FERS/SSA dual benefits form to SSA for information regarding appellant's potential receipt of dual benefits.

On March 20, 2023 OWCP received a completed FERS/SSA dual benefits form from SSA. SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA benefit rates with FERS were: \$1,765.00 effective January 2018; \$1,814.00 effective December 2018; \$1,874.00 effective December 2019; \$1,927.00 effective December 2020; \$2,071.00 effective December 2021; and \$2,283.00 effective December 2022. The form further indicated that the SSA rate without FERS was \$914.40 effective January 2018; \$940.00 effective December 2018; \$955.00 effective December 2019; \$967.40 effective December 2020; \$1,024.40 effective December 2021; and \$1,113.50 effective December 2022.

On April 25, 2023 OWCP notified appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$11,612.72 as he had received FECA wage-loss compensation benefits for the period April 9, 2022 through March 25, 2023 that had not been reduced by the portion of his SSA age-related retirement benefits attributable to his federal service, and that this portion of his SSA benefit constituted a prohibited dual benefit. With the preliminary determination, OWCP explained its calculation of his overpayment. For the period April 9 through June 18, 2022, he received an overpayment of \$2,449.73; for the period June 19 through July 1, 2022, appellant received an overpayment of \$448.54; for the period July 2 through 29, 2022, appellant received an overpayment of \$966.09; for the period July 30 through August 12, 2022, appellant received an overpayment of \$483.05; for the period August 13 through September 9, 2022, appellant received an overpayment of \$966.09; for the period September 10 through 23, 2022, appellant received an overpayment of \$483.05; for the period September 24 through October 14, 2022, appellant received an overpayment of \$724.57; for the period October 15 through November 18, 2022, appellant received an overpayment of \$1,207.61; for the period November 19 through 30, 2022, appellant received an overpayment of \$414.04; for the

period December 1 through 2, 2022, appellant received an overpayment of \$77.11; for the period December 17 through 20, 2022, appellant received an overpayment of \$154.22; for the periods January 1 through 14, 2023 and January 15 through 28, 2023, appellant received overpayments in the amount of \$539.77; and for the periods January 29 through February 25, 2023 and February 26 through March 25, 2023, appellant received overpayments in the amount of \$1,079.54. It therefore found an overpayment in the total amount of \$11,612.72. OWCP further advised him of its preliminary determination that he was without fault in the creation of the overpayment. It requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, it provided an overpayment action request form and notified him 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. No response was received.³

By decision dated June 6, 2023, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$11,612.72 for the period April 9, 2022 through March 25, 2023, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of the recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$612.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of 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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as

³ A completed financial disclosure statement (Form EN-1032) dated May 24, 2023 indicated that appellant received SSA retirement benefits under FERS.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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 has established that appellant received an overpayment of compensation in the amount of \$11,612.72 during the period April 9, 2022 through March 25, 2023, for which he was without fault, as he concurrently received SSA age-related retirement and FECA wage-loss compensation, without an appropriate offset.

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period April 9, 2022 through March 25, 2023. Consequently, the fact of overpayment has been established.⁹

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.

The Board has reviewed the calculation of benefits received by appellant for the period April 9, 2022 through March 25, 2023 and finds that an overpayment of compensation in the amount of \$11,612.72 has been established. OWCP received a dual benefits form from SSA regarding potential dual benefits. The SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period April 9, 2022 through March 25, 2023. OWCP explained its calculations of the amount that it should have offset during the relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 9, 2022 through March 25, 2023 and finds that OWCP properly calculated an overpayment of compensation in the amount of \$11,612.72.¹⁰

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

⁸ *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, *id.*

⁹ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

¹⁰ *N.V.*, Docket No. 20-0080 (issued January 21, 2022).

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.¹¹

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.¹²

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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

¹¹ 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).

¹² *A.C.*, *supra* note 8; *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹³ 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).

¹⁴ *Id.* at § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b).

or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷

In its preliminary overpayment determination, dated April 25, 2023, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. Appellant did not submit a Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Appellant had the responsibility to provide financial information to OWCP,¹⁸ but failed to do so. As appellant 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.¹⁹

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 hardship.²⁰

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$612.00 every 28 days from appellant's continuing compensation payments.

¹⁷ *Id.* at § 10.436.

¹⁸ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁹ *Id.* at § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁰ *Id.*

²¹ *Supra* note 13 at Chapter 6.500.8(c)(1) (September 2020).

OWCP provided appellant a Form OWCP-20 with its April 25, 2023 preliminary overpayment determination. It afforded him the opportunity to provide appropriate financial information and documentation to OWCP. Appellant however did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support his income and expenses prior to the final June 6, 2023 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²³ As of March 26, 2023 appellant received \$2,448.68 wage-loss compensation every 28 days. As he did not submit financial information as requested, the Board finds that OWCP reasonably required recovery by deducting \$612.00 from his continuing compensation payments every 28 days.²⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,612.72 during the period April 9, 2022 through March 25, 2023, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits 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 \$612.00 every 28 days from his continuing compensation payments.

²² 20 C.F.R. at § 10.438(a).

²³ *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 13 at Chapter 6.500.2 (September 2018).

²⁴ *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board