

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023, 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 \$400.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on different issues.⁴ The facts and circumstances set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on July 8, 1988 appellant, then a 30-year-old distribution clerk, sustained a tear of the sagittal band of the right second finger and complex regional sympathetic pain syndrome, Type I (CRPS), also known as reflex sympathetic dystrophy of the right hand. He stopped work on August 21, 1988.

Appellant began working as a lens grinder in February 1994. OWCP reduced his compensation effective February 18, 1994, based on its finding that his actual earnings as a lens grinder fairly and reasonably represented his wage-earning capacity. It paid appellant wage-loss compensation on the periodic rolls based on his loss of wage-earning capacity.

A notice of personnel action (Standard Form (SF)-50) indicated that appellant received a career appointment with the employing establishment on January 9, 1984. The remainder of the form is illegible.

On January 9, 2023 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA for completion. In a response dated February 28, 2023, SSA advised that appellant's SSA rate with FERS effective August 2022 was \$1,098.90 and without FERS was \$262.80; and effective December 2022 appellant's SSA rate with FERS was \$1,194.40 and without FERS was \$285.70.

On March 8, 2023 OWCP completed a FERS offset overpayment calculation form. It calculated the amount that it should have offset from appellant's compensation for each period August 1, 2022 through February 25, 2023. OWCP found that he had received an overpayment of \$3,362.76 for the period August 1 through November 30, 2022 and an overpayment of \$2,606.27 for the period December 1, 2022 through February 25, 2023. Based on these figures, OWCP calculated the total overpayment amount of \$5,969.03.

⁴ *Order Remanding Case, M.I.*, Docket No. 09-61 (issued September 8, 2009); Docket No. 10-491 (issued October 18, 2010); Docket No. 12-265 (issued October 19, 2012).

On May 1, 2023 OWCP notified appellant of its preliminary overpayment determination that he had received a \$5,969.03 overpayment of compensation for the period August 1, 2022 through February 25, 2023 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It set forth its calculation of the overpayment amount and further advised him of its preliminary determination 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 payment method. 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.

On May 8, 2023 appellant requested a decision on the written evidence. In a Form OWCP-20, he listed assets of \$5,000.00, monthly income of \$6,424.57, and monthly expenses of \$5,125.00.

On May 11, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

In an OWCP-20 form dated July 6, 2023, appellant listed monthly income of \$7,328.09, monthly expenses of \$6,876.03, and assets of \$750.00.

A telephonic prerecoupment hearing was held on August 16, 2023. Appellant offered to pay \$400.00 per month to repay the overpayment.

By decision dated October 16, 2023, OWCP's hearing representative finalized the May 1, 2023 preliminary overpayment determination. She found that appellant had received a \$5,969.03 overpayment of compensation for the period August 1, 2022 through February 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. The hearing representative noted that appellant had not submitted any evidence documenting his expenses or showing that the listed repayment amounts for loans constituted the minimum monthly amount. She found that appellant had monthly income of \$7,530.19⁵ and monthly expenses of \$6,876.03. The hearing representative denied waiver of recovery of the overpayment as he did not require substantially all of his income to meet ordinary and necessary living expenses. She required recovery of the overpayment by deducting \$400.00 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.⁶ Section 8116 limits the right of an employee to receive

⁵ OWCP's hearing representative adjusted appellant's monthly income to reflect that he received 13 payments from OWCP each year.

⁶ 5 U.S.C. § 8102.

compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁷

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 benefits that are attributable to the employee's federal service.⁸ 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.⁹

An offset is not required when the employee beneficiary is covered under the Civil Service Retirement System (CSRS).¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023.

OWCP determined that appellant had received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The offset provision of section 8116(d)(2) applies to SSA benefits that are attributable to federal service.¹¹ An offset is not required, however, where the employee beneficiary is covered under the CSRS and/or age-related benefits attributable to private sector employment.¹²

The Board has observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as the CSRS. Other federal employees are not entitled to be enrolled in a federal retirement program. Therefore, OWCP's procedures, with regard to requesting offset information, are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits. Thus, the information solicited on the FERS/SSA dual benefits form that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

⁷ *Id.* at § 8116.

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

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); *id.* at Chapter 2.1000.4e(2) (January 1997).

¹¹ *Supra* note 8; *see also M.F.*, Docket No. 18-0724 (issued March 27, 2020).

¹² *Supra* note 10.

Herein, the evidence of record does not establish that appellant was enrolled in FERS. The case record contains an SF 50 which documented that he received a career appointment with the employing establishment on January 9, 1984. The remainder of the form is illegible. OWCP has not provided evidence to establish that appellant was enrolled in FERS or that he subsequently elected FERS coverage. The Board thus finds that OWCP improperly determined that he received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023.

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 5, 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