

³ The Board notes that, following the September 10, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$77,049.38 for the period February 1, 2013 through July 13, 2024, 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; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$1,481.08 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 prior order are incorporated herein by reference. The relevant facts are as follows.

On June 3, 1991 appellant, then a 44-year-old special agent/air marshal, filed an occupational disease claim (Form CA-2) alleging that he sustained bacterial endocarditis causally related to factors of his federal employment. He indicated that he first became aware of his condition on April 12, 1991, and related it to factors of his federal employment on May 3, 1991. Appellant attributed his condition to being deployed in Europe and the Middle East from January 1991 until April 5, 1991. He stopped work on May 13, 1991.

OWCP accepted the claim for bacterial endocarditis, pericardial drainage, unspecified hypertensive heart disease without heart failure, aortic valve disorders, heart valve replacement, and benign hypertensive heart disease without heart failure. Appellant underwent OWCP-authorized heart valve replacement surgeries in July and October 1991 and a heart catheterization and angioplasty with deployment of a stent on April 29, 2006. OWCP paid appellant wage-loss compensation for total disability until he returned to work in 1992.

On November 14, 1995, appellant retired from the employing establishment on disability. A November 20, 1995 notification of personnel action (Standard Form (SF) 50-B) indicated that he had retirement coverage under the Federal Employees Retirement System (FERS) and the Federal Insurance Contributions Act (FICA).

Appellant, on February 6, 1996, elected to receive workers' compensation under FECA effective November 14, 1995, in lieu of retirement benefits from the Office of Personnel Management (OPM).

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls beginning November 15, 1995, and on the periodic rolls beginning February 4, 1996.

⁴ *Order Granting Remand*, Docket No. 94-2506 (issued June 12, 1995); Docket No. 95-1680 (issued November 3, 1997); Docket No. 17-0901 (issued January 29, 2018); *Order Dismissing Appeal*, Docket No. 19-1851 (issued August 19, 2020).

On April 7, 2021 OWCP sent a FERS/SSA dual benefits calculations form to SSA for completion. In a response dated April 12, 2021, SSA provided appellant's SSA rate with and without FERS from February 2013 through December 2020.

By letter dated May 11, 2021, OWCP advised appellant that his FECA wage-loss compensation benefits would be offset by his SSA age-related retirement benefits every 28 days, and that his new net wage-loss compensation payment every 28 days would be \$5,927.09. It applied the SSA offset to appellant's wage-loss compensation effective April 25, 2021.

On May 27, 2021 OWCP requested information from OPM regarding whether appellant was enrolled in a retirement system. On January 4, 2022 OPM responded, indicating that appellant was under the FERS retirement system; he had erroneously received interim pay, which appellant paid back on July 23, 1997; and that no OPM retirement benefits were currently being paid. OPM further indicated that OPM retirement benefits are payable "only if appellant elects to come on OPM rolls."

In an April 4, 2022 memorandum of telephone call (Form CA-110), appellant advised that he had telephoned OPM who verified that he was not covered under FERS. In a letter dated June 24, 2022, he again advised that both SSA and OPM had confirmed that he was not covered under FERS.

On April 3, 2023 OWCP requested verification from SSA that appellant received SSA benefits attributable to federal service and enclosed a FERS/SSA dual benefits calculations form for completion.

In a response received August 7, 2023, SSA again set forth the rates for appellant's SSA age-related retirement benefits with and without FERS. Beginning February 2013, appellant's SSA rate with FERS was \$1,935.60 and without FERS was \$1,426.50; beginning December 2013, his SSA rate with FERS was \$1,964.60 and without FERS was \$1,447.80; beginning December 2014, his SSA rate with FERS was \$1,997.90 and without FERS was \$1,472.40; beginning December 2016, his SSA rate with FERS was \$2,003.80 and without FERS was \$1,476.80; beginning December 2017, his SSA rate with FERS was \$2,043.80 and without FERS was \$1,506.30; beginning December 2018 his SSA rate with FERS was \$2,101.00 and without FERS was \$1,548.40; beginning December 2019, his SSA rate with FERS was \$2,134.60 and without FERS was \$1,573.10; beginning December 2020, his SSA rate with FERS was \$2,162.30 and without FERS was \$1,593.50; beginning December 2021 his SSA rate with FERS was \$2,289.80 and without FERS was \$1,687.50; and beginning December 2022, his SSA rate with FERS was \$2,489.00 and without FERS was \$1,834.30. SSA advised that before February 2013 appellant was receiving disability benefits that were not subject to offset.

On August 28, 2023 OWCP advised appellant that SSA had confirmed that he received age-related earnings attributable in part to his federal service. It noted that it had applied the SSA offset to his wage-loss compensation in April 2021 but that the offset should have occurred in 2013.

In a notice dated July 15, 2024, OWCP advised appellant of its preliminary determination that he had received a \$77,049.38 overpayment of compensation for the period February 1, 2013 through July 13, 2024 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 amount that it should have offset from his compensation for each period from February 1, 2013 through July 13, 2024. OWCP found that appellant had received an overpayment of \$5,085.42 for

the period February 1 through November 30, 2013; an overpayment of \$6,218.69 for the period December 1, 2013 through November 30, 2014; an overpayment of \$12,664.05 for the period December 1, 2014 through November 30, 2016; an overpayment of \$6,341.35 for the period December 1, 2016 through November 30, 2017; an overpayment of \$6,467.67 for the period December 1, 2017 through November 30, 2018; an overpayment of \$6,649.39 for the period December 1, 2018 through November 30, 2019; an overpayment of \$6,775.05 for the period December 1, 2019 through November 30, 2020; an overpayment of \$6,844.40 for the period December 1, 2020 through November 30, 2021; an overpayment of \$7,247.47 for the period December 1, 2021 through November 30, 2022; and an overpayment of \$12,755.89 for the period December 1, 2022 through July 13, 2024, for a total overpayment of \$77,049.38. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) and supporting financial documentation. 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 prerecoupment hearing.

In an overpayment action request form dated August 14, 2024, and postmarked August 19, 2024, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

In a letter dated August 19, 2024, appellant's counsel argued that OWCP should waive recovery of the overpayment as he had no knowledge of the overpayment. He cited circuit court case law addressing waiver of recovery of an incorrect SSA payment in support of his contention. Counsel also argued that appellant had detrimentally relied upon the overpayment as he had made financial decisions based on the amount of compensation that he had received since 2013. He attached an August 3, 2024 letter from appellant describing the cost of building his new home and expenses due to required medical treatment.

By decision dated September 9, 2024, OWCP denied appellant's request for a prerecoupment hearing. It found that he had made the request more than 30 days after the July 15, 2024 preliminary overpayment determination.

By decision dated September 10, 2024, OWCP finalized the finding that appellant received an overpayment of compensation in the amount of \$77,049.38 for the period February 1, 2013 through July 13, 2024 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that appellant was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment. OWCP noted that he had not provided any financial documentation supporting his income, expenses, and assets. It required recovery of the overpayment by deducting \$1,481.08 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁵ The date of the request is determined by the postmark or other carrier's date marking.⁶ Failure to request the prerecoupment hearing within 30 days shall

⁵ 20 C.F.R. § 10.432.

⁶ *Id.* at §§ 10.439, 10.616(a).

constitute a waiver of the right to a hearing.⁷ The only right to a review of a final overpayment decision is with the Board.⁸ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

The preliminary overpayment determination issued by OWCP was dated July 15, 2024. It advised appellant that he had 30 days to request a prerecoupment hearing. In a form dated August 14, 2024 and postmarked August 19, 2024, his counsel requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. As appellant's request for a prerecoupment hearing was postmarked August 19, 2024, more than 30 days after the July 15, 2024 preliminary overpayment determination, it was untimely filed.¹⁰ OWCP thus properly denied appellant's request for a prerecoupment hearing.¹¹

LEGAL PRECEDENT -- ISSUE 2

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.¹² 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.¹³

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.¹⁴ 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

⁷ *Id.* at § 10.432; *see also C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

⁸ 20 C.F.R. § 10.440(b).

⁹ *Id.*

¹⁰ 20 C.F.R. §§ 10.439, 10.616(a); *see J.B.*, Docket No. 22-1027 (issued November 16, 2023); *S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

¹¹ *See E.G.*, Docket No. 19-0176 (issued February 23, 2021); *E.V.*, Docket No. 17-1328 (issued December 11, 2017). *See also R.U.*, Docket No. 16-0027 (issued March 24, 2017); *Ronald E. Morris*, Docket No. 05-1553 (issued November 23, 2005).

¹² 5 U.S.C. § 8102.

¹³ *Id.* at § 8116.

¹⁴ 20 C.F.R. § 10.421(d); *see B.M.*, Docket No. 23-0891 (issued January 30, 2024); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$77,049.38 for the period February 1, 2013 through July 13, 2024, 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 wage-loss compensation for total disability beginning November 15, 1995. Appellant received SSA age-related retirement benefits beginning February 2013. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.¹⁶ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. Accordingly, the Board finds that fact of overpayment has been established.¹⁷

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from February 2013 through December 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 \$77,049.38. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$77,049.38 for the period February 1, 2013 through July 13, 2024.¹⁸

LEGAL PRECEDENT -- ISSUE 3

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.¹⁹ 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.²⁰

¹⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also* *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁶ *Supra* note 15; *see F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁷ *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹⁸ *See H.S.*, Docket No. 22-1040 (issued May 12, 2023); *J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹⁹ 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).

²⁰ *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.²¹ 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.²² To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.²³

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 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.²⁴ 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.²⁵

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 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.²⁶ 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.²⁷

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

²¹ 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).

²² *Id.* at § 10.437(a)(b).

²³ *Id.* at § 10.437(b)(1); *see also C.H.*, Docket No. 16-0968 (issued August 8, 2016).

²⁴ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁵ *Id.* at § 10.438(b).

²⁶ *Supra* note 24.

²⁷ *Id.* at § 10.438(b).

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.²⁸

In its July 15, 2024 preliminary overpayment determination, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant submitted an August 3, 2024 letter in which he described that his expenses did not provide any supporting financial documentation verifying the claimed income, expenses, and assets. OWCP, therefore, did not have the necessary current financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²⁹

Counsel argued that appellant detrimentally relied on the overpayment as he made financial decisions based on the compensation amount that he had received since 2013. Counsel did not, however, provide persuasive evidence that appellant gave up a valuable right in reliance on his wage-loss compensation benefits. He therefore failed to establish that recovery of the overpayment was against equity and good conscience.³⁰

Appellant had the responsibility to provide financial information to OWCP.³¹ As he failed to 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.³²

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.³³ Section 10.441 of OWCP's regulations³⁴ provides 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 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.³⁵

²⁸ See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

²⁹ *E.M.*, Docket No. 22-0081 (issued August 22, 2022); *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

³⁰ *M.L.*, Docket No. 25-0198 (issued February 12, 2025); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

³¹ 20 C.F.R. § 10.438; *J.M.*, Docket No. 23-1186 (issued January 25, 2024); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

³² *J.M.*, *id.*

³³ *Id.* at § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

³⁴ *Id.* at § 10.441(a).

³⁵ *Id.*; see *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.³⁶ OWCP's procedures provide 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.³⁷

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,481.08 from appellant's continuing compensation payments, every 28 days.

As noted above, appellant did not provide the necessary financial information regarding her income, expenses, and assets prior to the final overpayment decision. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.³⁸ As discussed, OWCP's procedures provide 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.³⁹ Appellant's net wage-loss compensation payment was \$5,924.32 every 28 days. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$1,481.08 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed. The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation in the amount of \$77,049.38, for the period February 1, 2013 through July 13, 2024, 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. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$1,481.08 from appellant's continuing compensation payments, every 28 days.

³⁶ See *P.S.*, Docket No. 25-0258 (issued February 24, 2025); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

³⁷ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020).

³⁸ *Id.*

³⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 9 and 10, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 9, 2025
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