

<sup>2</sup> The Board notes that, following the February 25, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

received benefits from the Department of Veterans Affairs (VA) and FECA schedule award compensation for the same condition; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 2, 2016, appellant, then a 36-year-old shipwright, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2016 he sustained a right low back injury when delivering materials from a drydock to the jobsite while in the performance of duty. He did not immediately stop work.<sup>4</sup> OWCP accepted his claim for aggravation of preexisting lumbar degenerative disc disease.

On March 9, 2020, appellant filed a claim for compensation (Form CA-7) for a schedule award. He certified that he received \$2,096.00 in monthly disability benefits from the VA for his "back\lower back\knees."

By decision dated October 16, 2020, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity and nine percent permanent impairment of the left lower extremity. The period of the award ran for 40.32 weeks from April 22, 2020 through January 29, 2021.

On December 14, 2022, OWCP subsequently received evidence from the VA indicating that, effective December 1, 2021, appellant received VA benefits based on a disability rating of 90 percent for a combined service-connected disability which accounted for multiple service-connected conditions. The document indicated that the monthly rate of appellant's VA benefits was \$2,433.52.

By decision dated April 26, 2023, OWCP granted appellant a schedule award for an additional seven percent permanent impairment of the left lower extremity for a total of 16 percent permanent impairment of the left lower extremity. The period of the award ran for 20.16 weeks from October 28, 2022 through March 18, 2023.

On September 25, 2023, OWCP received evidence from the VA, explaining appellant's history of service-connected disability. On an OWCP form, the VA documented that with regard to appellant's lumbar strain condition, he received 10 percent service-connected disability effective October 1, 2008. On October 28, 2016, appellant's disability rating from the VA was increased by 40 percent disability. On January 18, 2021, his disability rating from the VA was

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<sup>3</sup> *Order Remanding Case*, Docket No. 19-0024 (issued August 15, 2019).

<sup>4</sup> Appellant was separated from employment on July 31, 2019 due to his inability to perform the essential functions of his position.

decreased by 20 percent. The VA noted that appellant's current combined rating for his multiple service-connected conditions was 90 percent.

OWCP also received a September 8, 2023 VA disability rating decision for 90 percent combined service-connected disability. The decision included a summary of appellant's service-connected medical conditions subject to VA compensation, and the individual disability ratings for each condition.

By decision dated January 11, 2024, OWCP expanded the acceptance of appellant's claim to include lumbar radiculopathy.

In a June 6, 2024 letter, OWCP noted that appellant had been awarded a VA service-connected disability award for lumbar spine intervertebral disc syndrome prior to his accepted February 26, 2016 employment injury. It informed him that he had, therefore, received FECA prohibited dual benefits for a federal civilian work-related injury. OWCP explained that an increase in a VA service-connected disability brought about by an injury sustained while in federal civilian employment was considered a dual payment, when the veteran was also receiving FECA schedule award benefits. It advised that appellant was required to make an election between the entire entitlement under FECA for schedule award benefits and the entire amount of the VA award. OWCP enclosed an election of benefits form for his completion.

On a completed election of benefits form, appellant elected VA service-connected disability benefits in lieu of FECA schedule award benefits. The effective date of the election was April 22, 2020.

In a memorandum dated November 25, 2024, OWCP acknowledged receipt of appellant's election of VA benefits, effective April 22, 2020. It indicated that it had paid \$49,080.35 in schedule award compensation for the period April 22, 2020 through March 18, 2023, which created an overpayment of compensation.

The case record contains OWCP overpayment calculation memorandum, which outlined the amount of FECA schedule award compensation that appellant received for the period April 22, 2020 through March 18, 2023. For the period April 22 through October 10, 2020, appellant received \$16,530.61 in schedule award compensation. For the period April 22, 2020 through January 29, 2021, he received \$4,525.56 in schedule award compensation. For the period October 11 through November 7, 2020, appellant received \$2,691.03 in schedule award compensation. For the period November 8 through December 5, 2020, he received \$2,691.03 in schedule award compensation. For the period December 6, 2020 through January 2, 2021, appellant received \$2,691.03 in schedule award compensation. For the period January 3 through 29, 2021, he received \$2,521.93 in schedule award compensation. For the period October 28, 2022 through March 18, 2023, appellant received \$17,429.34 in schedule award compensation. This resulted in a total overpayment of \$49,080.53.

In a November 25, 2024 preliminary overpayment determination, OWCP advised appellant that he received an overpayment of compensation in the amount of \$49,080.53, for the period April 22, 2020 through March 18, 2023, because he received FECA schedule award compensation

while concurrently receiving increased service-connected disability benefits from the VA for the same condition. It advised that, under FECA, this was considered to be an impermissible dual payment. OWCP referenced an election of benefits form, wherein appellant elected to receive VA service-connected disability benefits in lieu of FECA schedule award benefits. The effective date of the election was April 22, 2020. OWCP explained its calculation of the overpayment. It further determined that appellant was without fault in the creation of the overpayment and requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method. OWCP further advised that he could request waiver of recovery of the overpayment. It requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, and canceled checks, pay slips, and any other records that support income and expenses. OWCP provided appellant 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 prerecoument hearing.

In an overpayment action request form dated October 4, 2024, appellant requested that OWCP issue a decision based on the written evidence and requested waiver of recovery of the overpayment. He submitted a completed Form OWCP-20. Appellant reported total monthly income of \$7,970.00; total monthly expenses of \$7,961.00; and total assets of \$9,400.00. He asserted that he detrimentally relied on his FECA benefits and that therefore recovery of overpayment should be waived. Appellant submitted financial documentation such as billing statements and credit card balance statements.

By decision dated February 25, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$49,080.53 (compromised to \$47,789.65), for the period April 22, 2020 through March 18, 2023 because he received FECA schedule award compensation while concurrently receiving increased service-connected disability benefits from the VA for the same condition. It advised that, under FECA, this was considered to be an impermissible dual payment. OWCP determined that the overpayment was not subject to waiver given his financial circumstances. It stated, “The overpayment cannot be waived because there is no evidence to substantiate that adjustment or recovery would defeat the purpose of the [FECA] or be against equity and good conscience.”<sup>5</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 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 duty.<sup>6</sup> Section 8116 of FECA defines the limitations on the right to receive

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<sup>5</sup> With respect to the recovery of an overpayment, the Board’s jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP’s overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

<sup>6</sup> 5 U.S.C. § 8102(a).

compensation benefits.<sup>7</sup> Section 8116(a) provides that while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the VA, unless such benefits are payable for the same injury or the same death being compensated for under FECA.<sup>8</sup>

The prohibition against dual payment of FECA and VA benefits extends to cases in which: (1) the disability or death of an employee resulted from an injury sustained while in federal civilian employment and the VA held that the same disability or death was caused by military service; or (2) an increase in a veteran's service-connected disability award was brought about by an injury sustained while in federal civilian employment.<sup>9</sup> OWCP must determine whether the award is based on a finding that the same disability or death for which FECA benefits are payable was caused by the military service, or whether the VA increased an award or found an award was payable for service-connected disability, because of the civilian employment injury for which FECA benefits are claimed.<sup>10</sup> An election between these benefits is required under both scenarios to avoid an overpayment of compensation.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$49,080.53 (compromised to \$47,789.65) for the period April 22, 2020 through March 18, 2023, for which he was without fault, because he received FECA schedule award compensation while concurrently receiving increased service-connected disability benefits from the VA for the same condition.

Effective October 1, 2008, appellant began to receive VA benefits at a 10 percent rating for a service-related lumbar strain. On February 26, 2016, he sustained a right low back injury when delivering materials from a drydock to the jobsite while in the performance of duty. Effective October 28, 2016, the VA increased payment of his service-related award for lumbar strain by 40 percent; and effective January 18, 2021, the VA decreased payment of his service-related award by 20 percent. OWCP subsequently paid appellant \$49,080.53 in FECA schedule award compensation for permanent impairment of his lower extremities causally related to the accepted lower back injury. The schedule award compensation covered the period April 22, 2020 through March 18, 2023. Appellant thereafter elected to receive VA service-connected disability

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<sup>7</sup> *Id.* at § 8116.

<sup>8</sup> *Id.* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.8b (December 1997); *J.C.*, Docket No. 16-1217 (issued October 11, 2017).

<sup>9</sup> *W.U.*, Docket No. 21-0530 (issued August 6, 2024); *P.G.*, Docket No. 14-0227 (issued January 9, 2015); *Kelvin L. Davis*, 56 ECAB 404 (2005).

<sup>10</sup> *Supra* note 8 at Chapter 2.1000.8a(5).

<sup>11</sup> *Id.*

benefits in lieu of FECA schedule award benefits retroactive to April 22, 2020. Consequently, appellant received prohibited dual benefits.<sup>12</sup>

With regard to the amount of the overpayment, the Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$49,080.53 for the period April 22, 2020 through March 18, 2023.

### **LEGAL PRECEDENT -- ISSUE 2**

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.<sup>13</sup> Section 8129 of FECA<sup>14</sup> provides that an overpayment must be recovered 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." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>15</sup>

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>16</sup> An individual's liquid assets include, but are not limited to, cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401 (k)), jewelry, and artwork.<sup>17</sup>

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<sup>12</sup> 20 C.F.R. § 10.437(a), (b).

<sup>13</sup> See *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *P.J.*, Docket No. 18-0248 (issued August 14, 2018); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>14</sup> 5 U.S.C. § 8129(1)-(b); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>15</sup> *A.C.*, *id.*; see *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>16</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020). OWCP's procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

<sup>17</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

According to 20 C.F.R. § 10.437 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 attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>18</sup> 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.<sup>19</sup>

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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver of recovery of the overpayment.<sup>20</sup>

### **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 of recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>21</sup>

On his completed Form OWCP-20, appellant reported total monthly income of \$7,970.00, total monthly expenses of \$7,961.00, and total assets of \$9,400.00. However, the supporting financial documentation submitted with his Form OWCP-20 indicates that he had total monthly income of \$8,150.07 and total monthly expenses of only \$5,193.60. As appellant's income exceeds his expenses by more than \$50.00, he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses and that his assets do not exceed the allowable resource base. Therefore, appellant, has not established that recovery of the overpayment would defeat the purpose of FECA.

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Although appellant asserted that he detrimentally relied on his FECA benefits, he did not submit evidence in support of his assertion. The case record, therefore, does not support that appellant would experience severe financial hardship in attempting to repay the debt.<sup>22</sup> Moreover, appellant has not presented evidence that he relinquished a valuable

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<sup>18</sup> 20 C.F.R. § 10.437(a), (b).

<sup>19</sup> *Id.* at § 10.437(b)(1).

<sup>20</sup> *Id.* at § 10.438.

<sup>21</sup> *Id.* at § 10.436.

<sup>22</sup> *Id.* at § 10.436(a); *supra* note 16 at Chapter 6.400.4a(2) (September 2020); *see also* D.D., Docket No. 12-675 (issued October 9, 2012); *Jan K. Fitzgerald*, 51 ECAB 659 (2000).

right or changed his position for the worse in reliance on the overpayment.<sup>23</sup> As the evidence fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying waiver of recovery of the overpayment.<sup>24</sup>

For these reasons, the Board thus finds that OWCP properly denied waiver of recovery of the overpayment.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$49,080.53 (compromised to \$47,789.65) for the period April 22, 2020 through March 18, 2023, for which he was without fault, because he received FECA schedule award compensation while concurrently receiving increased service-connected disability benefits from the VA for the same condition. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2025  
Washington, DC

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

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

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

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<sup>23</sup> *Id.* at § 10.437(b).

<sup>24</sup> *Id.*