

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,623.77, for the period April 1, 2023 through March 22, 2025, 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 \$1,554.22 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On November 7, 1997 appellant, then a 40-year-old correctional officer specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 1997 he injured his spinal cord when teaching a self-defense move and lost feeling in both arms and legs while in the performance of duty. OWCP accepted the claim for cervical spinal stenosis, cervical disc disorder at C6-C7 with radiculopathy, cervical disc disorder at C3-C4, lesion of the right ulnar nerve, depressive disorder, degeneration of lumbar intervertebral disc, displacement of cervical intervertebral disc without myelopathy, degeneration of cervical intervertebral disc, cervicgia, mid-cervical disc disorder, and medial epicondylitis. It paid appellant wage-loss compensation on the supplemental rolls, effective January 14, 1998, and on the periodic rolls, effective March 29, 1998.

On January 14, 1999 appellant retired from the employing establishment on disability. A February 1, 1998 notification of personnel action (Standard Form (SF) 50-B) indicated that his service computation date was April 7, 1990, and that he had retirement coverage under the Federal Employees Retirement System (FERS) and the Federal Insurance Contributions Act (Special).

Appellant elected to receive workers' compensation under FECA effective January 15, 1999, in lieu of retirement benefits from the Office of Personnel Management (OPM).

On April 7, 2025 OWCP requested information from SSA regarding potential dual benefits.

OWCP thereafter received a completed dual benefits form from SSA dated April 8, 2025. The form indicated that appellant received SSA age-related retirement benefits as of April 2023 and provided appellant's SSA age-related retirement benefit rates with and without federal service. Beginning April 2023, the SSA rate with federal service was \$1,734.00 and without federal service

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the June 6, 2025 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.*

was \$1,339.60. Beginning December 2023, the SSA rate with federal service was \$1,789.40 and without federal service was \$1,382.40. Beginning December 2024, the SSA rate with federal service was \$1,834.10 and without federal service was \$1,416.90.

On April 14, 2025 OWCP notified appellant that his wage-loss compensation payments would be adjusted to reflect an offset of \$385.11 per 28-day pay period for his SSA age-related retirement benefits attributable to his federal service. As of the period beginning March 23, 2025, OWCP adjusted his net wage-loss compensation to \$2,612.19 per 28-day pay period.

In an April 14, 2025, preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$9,623.77 for the period April 1, 2023 through March 22, 2025 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It provided an offset overpayment calculation, in which it used the information provided by SSA on April 8, 2025 to calculate the 28-day offset for the relevant periods. OWCP determined that, during the period April 1 through November 30, 2023, appellant received an overpayment in the amount of \$3,172.52; during the period December 1, 2023 through November 30, 2024, he received an overpayment in the amount of \$4,910.81; and during the period December 1, 2024 through March 22, 2025, he received an overpayment in the amount of \$1,540.44. It noted the total overpayment amount was \$9,623.77. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, it notified him that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days. No response was received.

By decision dated June 6, 2025, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$9,623.77 for the period April 1, 2023 through March 22, 2025 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that he had not submitted a completed OWCP-20 form or provided any financial documentation. OWCP required recovery of the overpayment by deducting \$1,544.22 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.⁴ Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have

⁴ *Supra* note 1 at § 8102(a).

continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ 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 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,623.77, for the period April 1, 2023 through March 22, 2025, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

The evidence of record indicates that, during this period, OWCP paid appellant wage-loss compensation benefits under FECA while he concurrently received SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the period April 1, 2023 through March 22, 2025. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA benefits that were 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 its age-related retirement benefit rates with federal service and without federal service for the period April 1, 2023 through March 22, 2025. OWCP provided its calculations for each relevant period based on the SSA worksheet and determined that appellant received an overpayment in the amount of \$9,623.77.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period April 1, 2023 through March 22, 2025 and finds that it properly determined that an overpayment of compensation in the amount of \$9,623.77 was created.⁹

⁵ *Id.* at § 8116(a).

⁶ 20 C.F.R. § 10.421(d); *P.L.*, Docket No. 20-0709 (issued March 18, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

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

⁸ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 6; *L.J.*, *supra* note 6.

⁹ *See R.F.*, Docket No. 20-0159 (issued October 15, 2020); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that adjustment or recovery by the United States may not be made when 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.¹⁰ Thus, a finding that appellant was without fault does not automatically result in waiver 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.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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, 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.¹²

Section 10.437 of OWCP's implementing regulations provides that 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.¹³

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.¹⁴ 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 of the overpayment, and no further request for waiver shall be considered until the requested information is furnished.¹⁶

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.436.

¹² *Id.*; OWCP 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. Its 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) and (3) (September 2020).

¹³ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁴ *Id.* at 10.438(a).

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

¹⁶ *Id.* at § 10.438(b); *see G.S.*, Docket No. 20-1580 (issued March 19, 2021).

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 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 14, 2025, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. Appellant, however, did not provide the requested financial information. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

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.²⁰

Section 10.441 of OWCP's regulations²¹ 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$1,554.22 from appellant's continuing compensation payments every 28 days.

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

¹⁸ 20 C.F.R. § 10.438.

¹⁹ See *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²⁰ 20 C.F.R. § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²¹ *Id.* at § 10.441(a).

²² *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, 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.²³ OWCP required recovery of the overpayment by deducting \$1,544.22 from appellant's continuing compensation payments every 28 days, which is greater than 25 percent of the 28-day net compensation amount of \$2,612.19. Therefore, the Board finds that OWCP abused its discretion by deducting \$1,544.22 from appellant's continuing compensation payments, every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$9,623.77, for the period April 1, 2023 through March 22, 2025, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP improperly required recovery of the overpayment by deducting \$1,554.22 from appellant's continuing compensation payments, every 28 days.

²³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Liquidation*, Chapter 6.500.8c(1) (September 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: August 1, 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