

**United States Department of Labor
Employees' Compensation Appeals Board**

<p>R.B., Appellant</p> <p>and</p> <p>DEPARTMENT OF VETERANS AFFAIRS, WASHINGTON VA MEDICAL CENTER, Washington, DC, Employer</p>	<p>)))))))</p>	<p>Docket No. 25-0691</p> <p>Issued: August 20, 2025</p>
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2025, appellant, through counsel, filed a timely appeal from a June 24, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,785.32, for the period March 1, 2023 through April 19, 2025, for which he was without fault, as he concurrently received FECA wage-loss

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.

² 5 U.S.C. § 8101 *et seq.*

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 \$ 77.94 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On September 8, 2017, appellant, then a 60-year-old diagnostic radiologic technician, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2017 he sustained a left shoulder injury when he was lifting a patient while in the performance of duty. His retirement system coverage was noted as under the Federal Employees Retirement System (FERS). OWCP accepted the claim for strain of unspecified muscle, fascia and tendon at the shoulder and upper arm level, left arm. It paid appellant wage-loss compensation on the supplemental rolls, effective February 26, 2023, and on the periodic rolls, effective August 13, 2023.

On April 14, 2025, OWCP provided SSA with a dual benefits form for its completion.

On April 16, 2025, SSA returned the completed form, reporting appellant's SSA age-related retirement benefit rates with and without federal service from March 2023 through January 2025. Beginning March 2023, the SSA rate with federal service was \$2,523.10 and without federal service was \$2,035.90. Beginning December 2023, the SSA rate with federal service was \$2,603.90 and without federal service was \$2,101.00. Beginning January 2024, the SSA rate with federal service was \$2,652.60 and without federal service was \$2,101.00. Beginning December 2024, the SSA rate with federal service was \$2,718.90 and without federal service was \$2,153.50. Beginning January 2025, the SSA rate with federal service was \$2,761.50 and without federal service was \$2,153.50.

In a letter dated April 21, 2025, OWCP advised appellant that, effective May 17, 2025, his FECA wage-loss compensation would be offset by his SSA age-related retirement benefits every 28 days, in the amount of \$464.22. Appellant's new net wage-loss compensation payments every 28 days would be \$311.77.

On April 22, 2025, OWCP prepared an overpayment calculation worksheet, wherein it explained the calculation of appellant's SSA offset overpayment for the period March 1, 2023 through April 19, 2025. It determined that for the period March 1 through November 30, 2023, appellant received an overpayment in the amount of \$4,416.89; for the period December 1 through 31, 2023, he received an overpayment in the amount of \$513.96; for the period January 1 through November 30, 2024, he received an overpayment in the amount of \$6,091.86; for the period December 1 through 31, 2024, he received an overpayment in the amount of \$577.83; and for the period January 1 through April 19, 2025, he received an overpayment in the amount of \$2,184.79.

In a May 1, 2025 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$13,785.32 for the period March 1, 2023 through April 19, 2025, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It further determined that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account

statements, bills, pay slips, and other records to support his reported income and expenses. Additionally, it 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 prerecouplement hearing.

In an overpayment action request form dated May 8, 2025, appellant requested a decision based on the written evidence. He disagreed with the fact and amount of the overpayment, and requested waiver of recovery.

In a May 9, 2025 letter, OWCP provided an additional Form OWCP-20, and requested that he 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.

On May 27, 2025, appellant submitted a second overpayment action request form, requesting a decision based on the written evidence. He again disagreed with the amount of the overpayment and requested waiver of recovery. Appellant also submitted a completed Form OWCP-20 dated May 26, 2025, reporting total monthly income of \$6,492.00, total monthly expenses of \$5,534.00, and total assets of \$16,335.00. He provided supporting financial documentation.

By decision dated June 24, 2025, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$13,785.32 for the period March 1, 2023 through April 19, 2025, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It determined that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$77.94 from his 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 of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³ 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.⁴

Section 10.421(d) of the implementing regulations requires OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.⁵ 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d).

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.⁶

ANALYSIS

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,785.32, for the period March 1, 2023 through April 19, 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 establishes that appellant received wage-loss compensation under FECA, and SSA age-related retirement benefits based on his federal service for the same period. No appropriate offset was made. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ Consequently, the fact of overpayment has been established.⁸

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. SSA provided appellant's age-related retirement benefits rates with and without federal service for the period March 1, 2023 through April 19, 2025. OWCP provided its overpayment calculations for this period based on SSA's dual benefits form and determined that appellant received an overpayment of compensation in the amount of \$13,785.32.

The Board has reviewed OWCP's calculations for the period March 1, 2023 through April 19, 2025, and finds that an overpayment of compensation in the amount of \$13,785.32 was created.

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.⁹ 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.¹⁰

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,

⁶ FECA Bulletin No. 97-09 (February 3, 1997).

⁷ See *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁸ *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹¹ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹² Also, 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.¹³ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁴ Non liquid 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.¹⁵

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.¹⁶ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$13,785.32 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁸

On the Form OWCP-20, appellant reported total assets of \$16,335.00. As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for

¹¹ 20 C.F.R. § 10.436(a)(b).

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

¹³ *Id.* at Chapter 6.400.4a(2).

¹⁴ *Id.* at Chapter 6.400.4b(3).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

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

¹⁷ *Supra* note 12 at Chapter 6.400.4c(3).

¹⁸ *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

an individual with a spouse or dependent.¹⁹ Accordingly, the Board finds that appellant has not met the standard for waiver of recovery of the overpayment, because his assets exceed the allowable resource base.²⁰ Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider whether he needs substantially all of his current income to meet ordinary and necessary living expenses.²¹

The Board also finds that appellant has not established that he was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience.

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations 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 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 properly required recovery of the overpayment by deducting \$77.94 from appellant's continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayment through \$77.94 deductions from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²³ Thus, the Board finds that it properly required recovery of the overpayment by deducting \$77.94 from appellant's continuing compensation payments every 28 days.²⁴

¹⁹ *Supra* note 12.

²⁰ *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

²¹ *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

²² 20 C.F.R. § 10.441(a).

²³ See *C.S.*, Docket No. 23-0587 (issued July 9, 2025); *J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

²⁴ *Id.*

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$13,785.32, for the period March 1, 2023 through April 19, 2025, for which he was without fault, as 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 and properly required recovery of the overpayment by deducting \$77.94 from his continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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