

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,951.23, for the period April 1, 2024 through March 22, 2025, for which he was without fault, as 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 \$1,191.73 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On November 12, 2014 appellant, then a 60-year-old planner/estimator, filed an occupational disease claim (Form CA-2) alleging that he developed back, hip, leg, and ankle issues due to factors of his federal employment. His retirement system coverage was noted as under the Federal Employees Retirement System (FERS). By decision dated March 27, 2015, OWCP accepted appellant's claim for lumbar sprain and cervical intervertebral degeneration. It subsequently expanded acceptance of the claim to include lumbar intervertebral disc degeneration, lumbar ligaments sprain, and mid-cervical disc degeneration. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective October 29, 2014, and on the periodic rolls, effective April 5, 2015.

In a letter dated May 3, 2016, OWCP notified appellant that his compensation benefits would be reduced if he received SSA benefits based upon his age and federal service. It further advised appellant that failure to report receipt of such retirement benefits could result in an overpayment of compensation, which would be subject to recovery.

On February 24, 2025 OWCP provided SSA with a dual benefits form for its completion.

On March 6, 2025, SSA returned the completed form, reporting appellant's SSA age-related retirement benefit rates with and without federal service commencing April 2024 and commencing December 2024. Beginning April 2024, the SSA rate with federal service was \$3,899.90 and without federal service was \$2,805.00. Beginning December 2024, the SSA rate with federal service was \$3,997.30 and without federal service was \$2,875.00.

On June 5, 2025, OWCP prepared an overpayment calculation worksheet, wherein it explained the calculation of appellant's SSA offset overpayment for the period April 1, 2024 through March 22, 2025. It determined that for the period April 1 through November 30, 2024 appellant received an overpayment of compensation in the amount of \$8,807.35 and for the period December 1, 2024 through March 22, 2025, he received an overpayment of compensation in the amount of \$4,143.88, resulting in a total overpayment of \$12,951.23.

In a June 5, 2025 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$12,951.23 for the period April 1, 2024 through March 22, 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 prerecoupment hearing. No response was received.

By decision dated September 2, 2025, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$12,951.23 for the period April 1, 2024 through March 22, 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 \$1,191.73 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 to 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 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 -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$12,951.23, for the period April 1, 2024 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 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d).

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

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 April 1, 2024 through March 22, 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 \$12,951.23.

The Board has reviewed OWCP's calculations for the period April 1, 2024 through March 22, 2025, and finds that an overpayment of compensation in the amount of \$12,951.23 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 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.¹⁰

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.¹¹ 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.¹²

⁷ See *R.B.*, Docket No. 25-0691 (issued August 20, 2025); *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

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

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *B.H.*, Docket No. 25-0589 (issued July 3, 2025); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$12,952.23 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁴ In order to establish that recovery of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses, or that his assets do not exceed the established limit as determined by OWCP procedures.¹⁵

In its June 5, 2025 preliminary overpayment determination, OWCP explained the importance of providing an updated Form OWCP-20 and supporting financial documentation. Appellant, however, did not respond. 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.¹⁶

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.¹⁷

On appeal counsel asserts that appellant gave up a valuable right to prompt repayment due to OWCP's failure to provide appellant with a clear and unambiguous notice regarding the potential for an overpayment following receipt of social security benefits. Contrary to counsel's assertion, OWCP unequivocally informed appellant by letter dated May 3, 2016 that continuing compensation benefits would be reduced if he began to receive SSA benefits based on age and federal service. It also informed him that an overpayment of compensation could result if he failed to report receipt of retirement benefits to OWCP and this could be subject to recovery.

¹³ 5 U.S.C. § 8129.

¹⁴ *Id.*

¹⁵ *Supra* note 10 at § 10.432

¹⁶ *Id.* at § 10.438.

¹⁷ See *B.H.*, *supra* note 12; *K.P.*, Docket No. 25-0040 (issued December 5, 2024); *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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.¹⁸

Section 10.441 of OWCP's regulations¹⁹ 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.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,191.73 from appellant's continuing compensation payments, every 28 days.

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.²¹ In this case, appellant did not submit a completed Form OWCP-20, reporting his income, assets, and expenses with supporting financial documentation prior to OWCP's issuance of the August 15, 2025 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$1,191.73 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 \$12,191.23 for the period April 1, 2024 through March 22, 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 \$1,191.73 from his continuing compensation payments every 28 days.

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

¹⁹ *Id.* at § 10.441(a).

²⁰ *Id.*; *see B.H., supra* note 12; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 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