

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 \$579,610.20, for the period December 24, 2006 through April 20, 2024, because he concurrently received benefits from the Department of Veterans Affairs (VA) and FECA wage-loss compensation for the same condition; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On April 19, 2006 appellant, then a 60-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2006 he sustained injury when a coworker assaulted him with a closed fist while in the performance of duty. He stopped work on the date of the claimed injury. OWCP accepted appellant's claim for open wounds of both lips without complications and post-traumatic stress disorder (PTSD). It paid him wage-loss compensation for disability from work on the supplemental and periodic rolls.

OWCP subsequently received evidence indicating that, effective June 22, 2006, appellant received VA benefits based on a disability rating of 70 percent for service-connected disability caused by PTSD. It further received evidence that, effective March 25, 2008, appellant's disability rating from the VA was increased from 70 percent to 100 percent disability for service-connected disability caused by PTSD.

In an EN-1032 form signed on May 14, 2010, appellant reported that he received benefits from the VA for PTSD. He indicated that the percentage of his VA award had increased since sustaining the injury for which he was receiving FECA benefits. Appellant reported that the increase occurred on June 29, 2009 and that he was notified of this increase on July 12, 2009.³

On December 7, 2023, OWCP received a document from the VA, bearing the same date, in which the VA advised that on June 22, 2006 appellant was granted an award for 70 percent disability due to PTSD, and that this award for disability due to PTSD increased to 100 percent on March 25, 2008. The document indicated that the monthly rate of appellant's VA benefits was \$2,669.00 on March 25, 2008, and \$3,706.69 on December 1, 2023.

In a January 2, 2024 letter, OWCP advised appellant that he had been awarded a VA service-connected disability award for PTSD due to his accepted April 12, 2006 employment injury. It indicated that he had received FECA prohibited dual benefits for a federal civilian work-related injury and 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 wage-loss compensation. OWCP advised that appellant was required to make an election between the entire entitlement under FECA and the entire amount of the VA award, and that an election was irrevocable after it was made. It noted that he received compensation every four weeks in the amount of \$4,139.00, which equaled compensation each

³ In a March 9, 2021 letter, the VA advised OWCP that it did not have a form from appellant in which he elected to receive VA benefits, rather than FECA benefits.

month in the amount of \$4,483.92. OWCP requested that appellant complete and return an enclosed election of benefits form.

In a March 4, 2024 letter, OWCP again explained the nature of dual VA and FECA benefits. It noted that it had not received an election of benefits form in response to its January 1, 2024 request, and it again requested that appellant complete and return an enclosed election of benefits form. OWCP stated, “[y]our failure to make the required election within 30 days will be considered an election of benefits from the [VA] and your case will be processed accordingly.” It noted that it was imperative for appellant to submit an election of benefits form within 30 days as an overpayment of compensation had been created and would continue to increase.⁴

In an April 29, 2024 letter to the employing establishment, OWCP discussed dual VA and FECA benefits and claimed that an overpayment of compensation had been created. It advised that appellant had not submitted an election of benefits form. OWCP stated, “[e]nclosed is a copy of the letter sent to the injured worker advising that an election of benefits was required. Our office will process the necessary overpayment for the period of dual benefits.”

The case record contains OWCP payment records, as well as worksheets and manual adjustment forms from early-May 2024, discussing FECA benefits appellant received from December 24, 2006 through April 20, 2024. He received 216 FECA disability compensation payments from December 24, 2006 through April 20, 2024. The gross amount of FECA compensation appellant received from OWCP during that period was \$701,149.28. Deductions were made for appellant’s elected basic life insurance benefits premiums in the amount of \$826.20, and \$54,598.80 was withheld for his optional life insurance premiums. In addition, \$48,563.76 was withheld for a Social Security Administration (SSA) offset put in place effective March 1, 2016. The gross amount of \$701,149.28 less the \$103,988.76 for deducted premiums and offset resulted in a net total of \$597,160.52. For the period December 24, 2006 through April 20, 2024, appellant was not entitled to any disability compensation from OWCP. He submitted a check on October 11, 2016 in the amount of \$17,550.32, which was paid towards a prior debt incurred. Therefore, when \$17,550.32 was subtracted from the total debt amount of \$597,160.52, and the new current total balance was \$579,610.20.

In a May 8, 2024 preliminary overpayment determination, OWCP advised appellant that he received an overpayment of compensation in the amount of \$579,610.20, for the period December 24, 2006 through April 20, 2024, because he received FECA wage-loss compensation from OWCP for PTSD sustained when working for the employing establishment while concurrently receiving 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 April 29, 2024 letter to the VA, which indicated that appellant had not responded to a request to submit an election of benefits form, and found that therefore he was considered to have elected to receive compensation benefits from the DVA in lieu of benefits under FECA. It determined that he was without fault in the creation of the overpayment because he could not have reasonably known that improper payments occurred. OWCP provided a calculation of the overpayment and requested that appellant complete an overpayment recovery questionnaire (Form

⁴ Appellant received wage-loss compensation on the periodic rolls through April 20, 2024.

OWCP-20) to determine a reasonable recovery method. It advised him that he could request waiver of recovery of the overpayment and 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 prerecoupment hearing.

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, dated June 4, 2024. Appellant listed total monthly income of \$8,826.79; total monthly expenses of \$13,312.83; and total assets of \$210,126.61. He asserted that he detrimentally relied on his FECA benefits and that therefore recovery of overpayment should be waved. Appellant submitted financial documentation such as billing statements and credit card balance statements.

By decision dated July 8, 2024, OWCP's hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$579,610.20, for the period December 24, 2006 through April 20, 2024 overpayment because he received FECA wage-loss compensation from OWCP for PTSD sustained when working for the employing establishment while concurrently receiving service-connected disability from the VA for the same condition. 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."⁵

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.⁶ Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁷ 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

⁵ 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.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

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.⁸

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.⁹ 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.¹⁰ An election between these benefits is required under both scenarios to avoid an overpayment of compensation.¹¹

An election is required between the full amount of FECA benefits plus the amount received from the VA prior to the employment injury or the total benefits provided by the VA subsequent to its increase.¹² In *S.K.*,¹³ the Board affirmed OWCP's finding that as the claimant failed to respond to the election form, he had made an election for the receipt of VA benefits.

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$579,610.20, for the period December 24, 2006 through April 20, 2024, because he concurrently received benefits from the VA and FECA wage-loss compensation for the same condition.

The case record supports that appellant concurrently received benefits from the VA and wage-loss compensation from OWCP during the period December 24, 2006 through April 20, 2024. Effective June 22, 2006, appellant began to receive VA benefits at a 70 percent rating for a service-related PTSD condition; effective March 25, 2008, the VA increased payment of this service-related award to a 100 percent rating. Appellant is deemed to have elected to receive VA benefits in lieu of FECA benefits during the period December 24, 2006 through April 20, 2024 because he did not respond to OWCP's multiple requests to complete and return an election of benefits form.¹⁴ The case record also supports that appellant received \$579,610.20 in FECA

⁸ *Id.* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.8b (February 1995); *J.C.*, Docket No. 16-1217 (issued October 11, 2017).

⁹ *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).

¹⁰ *Supra* note 8 at Chapter 2.1000.8a(5).

¹¹ *Id.*

¹² *Supra* note 8 at Chapter 2.1000.8b(2).

¹³ Docket No. 17-1573 (issued December 28, 2018).

¹⁴ *See supra* notes 11 and 12.

compensation for the period December 24, 2006 through April 20, 2024. Because appellant's disability resulted from the PTSD injury sustained while in federal civilian employment, and the VA held that the same disability from PTSD was caused by military service, appellant's receipt of dual VA and FECA benefits was prohibited.¹⁵

In the present case, appellant received \$579,610.20 in FECA compensation for the period December 24, 2006 through April 20, 2024 despite the fact that he was not entitled to FECA compensation for this period. Therefore, OWCP properly determined that appellant received an overpayment of compensation in the amount of \$579,610.20.

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.¹⁶ Section 8129 of FECA¹⁷ 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.¹⁸

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.¹⁹ 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,

¹⁵ See *supra* note 8.

¹⁶ 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).

¹⁷ 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).

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

¹⁹ 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).

vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401 (k)), jewelry, and artwork.²⁰

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.²¹ 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.²²

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.²³

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.²⁴

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because 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. As appellant reported assets of \$210,127.61, his assets well-exceed the allowable resource base of a claimant, like himself, who has a spouse and no other dependent, *i.e.*, \$10,300.00.²⁵ Therefore, recovery of the overpayment would not defeat the purpose of FECA.

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. The record does not support that appellant would

²⁰ *Id.* at Chapter 6.400.4b(3)(a), (b).

²¹ 20 C.F.R. § 10.437(a), (b).

²² *Id.* at § 10.437(b)(1).

²³ 20 C.F.R. § 10.438.

²⁴ *Id.* at § 10.436.

²⁵ *See supra* note 21.

experience severe financial hardship in attempting to repay the debt.²⁶ Moreover, appellant has not presented evidence that she relinquished a valuable right or changed her position for the worse in reliance on the overpayment.²⁷ 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 by denying waiver of recovery of the overpayment.

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 \$579,610.20, for the period December 24, 2006 through April 20, 2024, because he concurrently received VA benefits and FECA wage-loss compensation 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 July 8, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²⁶ 20 C.F.R. § 10.436(a); *supra* note 19 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).

²⁷ 20 C.F.R. § 10.437(b).