

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

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<b>J.S., Appellant</b>	)	
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	)	
<b>and</b>	)	
	)	<b>Docket No. 25-0646</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	<b>Issued: July 29, 2025</b>
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, ORLANDO</b>	)	
<b>INTERNATIONAL AIRPORT, Orlando, FL,</b>	)	
<b>Employer</b>	)	
	)	

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*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On June 26, 2025 appellant, through counsel, filed a timely appeal from a June 12, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case

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<sup>1</sup> 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 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.

<sup>2</sup> 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 \$47,087.89, for the period September 1, 2015 through October 5, 2024, 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 \$1,300.00 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

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

On April 27, 2005 appellant, then a 55-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on April 18, 2005 he twisted his back when loading bags and injured his right hip when he tripped over a floor mat while in the performance of duty. His retirement system coverage was noted as under the Federal Employees Retirement System (FERS). OWCP accepted appellant's claim for lumbago and subsequently expanded the acceptance of his claim to include permanent aggravation of degenerative disc disease, spinal stenosis of L3-4, L4-5, and L5-S1, permanent aggravation of right hip arthritis, right hip contusion, right knee contusion, lumbar radiculitis, and bursitis of the hip. Appellant stopped work in mid-2005 and OWCP paid him wage-loss compensation for disability from work on the supplemental rolls, effective June 6, 2005, and on the periodic rolls, effective July 10, 2005.

Appellant retired from the employing establishment and began to receive SSA age-related retirement benefits effective September 1, 2015.

On June 17, 2024 OWCP requested information from SSA regarding potential dual benefits.

On July 1, 2024 OWCP received a FER/SSA dual benefits form completed by SSA on the same date, which indicated that appellant received SSA age-related retirement benefits that were attributable to federal service commencing September 1, 2015. SSA provided him age-related retirement benefit rates with and without federal service. Beginning September 2015, the SSA rate with federal service was \$1,591.10 and without federal service was \$1,198.50. Beginning December 2016, the SSA rate with federal service was \$1,595.80 and without federal service was \$1,202.00. Beginning December 2017, the SSA rate with federal service was \$1,627.70 and without federal service was \$1,226.00. Beginning December 2018, the SSA rate with federal service was \$1,673.20 and without federal service was \$1,260.30. Beginning December 2019, the SSA rate with federal service was \$1,699.90 and without federal service was \$1,280.40. Beginning December 2020, the SSA rate with federal service was \$1,721.90 and

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<sup>3</sup> Docket No. 11-735 (issued October 19, 2011); Docket No. 14-1425 (issued October 22, 2014); Docket No. 23-0518 (issued April 9, 2024).

without federal service was \$1,297.00. Beginning December 2021, the SSA rate with federal service was \$1,823.40 and without federal service was \$1,373.50. Beginning December 2022, the SSA rate with federal service was \$1,982.00 and without federal service was \$1,492.90. Beginning December 2023, the SSA rate with federal service was \$2,045.40 and without federal service was \$1,540.60.

On October 9, 2024 OWCP prepared an overpayment calculation worksheet, based on the benefit rates provided by SSA. It determined that: for the period September 1, 2015 through November 30, 2016 appellant received an overpayment of \$5,914.89; for the period December 1, 2016 through November 30, 2017 appellant received an overpayment of \$4,738.58; for the period December 1, 2017 through November 30, 2018 he received an overpayment of \$4,833.64; for the period December 1, 2018 through November 30, 2019 appellant received an overpayment of \$4,968.41; for the period December 1, 2019 through November 30, 2020 he received an overpayment of \$5,061.66; for the period December 1, 2020 through November 30, 2021 appellant received an overpayment of \$5,112.81; for the period December 1, 2021 through November 30, 2022 he received an overpayment of \$5,413.63; for the period December 1, 2022 through November 30, 2023 appellant received an overpayment of \$5,885.32; and for the period December 1, 2023 through October 5, 2024 he received an overpayment of \$5,158.95. The total overpayment amount was determined to be \$47,087.89.

On October 9, 2024 OWCP notified appellant that his wage-loss compensation payments would be offset by the portion of his SSA age-related retirement benefits attributable to his federal service. It advised that his new net wage-loss compensation payments would be \$1,455.03.

In an October 22, 2024 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$47,087.89 for the period September 1, 2015 through October 5, 2024, because he concurrently received SSA age-related retirement benefits attributable to his federal service and FECA wage-loss compensation, without an appropriate offset. It further advised him of its preliminary finding that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and other records in order to support income and expenses. Additionally, OWCP provided 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.

On October 30, 2024 OWCP received an overpayment action request form, signed on the same date, in which appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He indicated that he was challenging the fact and amount of the overpayment and requested waiver of recovery of the overpayment. During the prerecoupment hearing, held on February 12, 2025, OWCP's hearing representative advised appellant and counsel regarding the standards for waiver of recovery of the overpayment.

On April 2, 2025 OWCP received a completed Form OWCP-20, dated March 17, 2025, on which appellant reported \$5,529.89 in total monthly income, \$3,999.42 in total monthly expenses, and \$4,800.28 in total assets.

By decision dated June 12, 2025, OWCP's hearing representative finalized the October 22, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$47,087.89 for the period September 1, 2015 through October 5, 2024, because he concurrently received SSA age-related retirement benefits attributable to his federal service and FECA wage-loss compensation, without an appropriate offset. The hearing representative further found that he was without fault in the creation of the overpayment, but denied waiver of recovery because his monthly income exceeded his monthly expenses by more than \$50.00. The financial information submitted by appellant demonstrated that he had \$5,529.89 in monthly income and \$4,200.17 in monthly expenses. The hearing representative discussed appellant's financial circumstances and required recovery of the overpayment by deducting \$1,300.00 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.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>4</sup> 5 U.S.C. § 8102.

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

## **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$47,087.89, for the period September 1, 2015 through October 5, 2024, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

Commencing June 6, 2005, OWCP paid appellant wage-loss compensation for disability from work due to his accepted April 18, 2005 employment injury. The case record establishes that, commencing September 1, 2015, appellant was concurrently receiving wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to his federal service, without an appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> Consequently, fact of overpayment has been established.<sup>9</sup>

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. OWCP received documentation, wherein SSA provided appellant's age-related retirement benefits attributable with federal service and without federal service for the period September 1, 2015 through October 5, 2024. It provided its calculations for each relevant period based on the information provided by SSA and determined that appellant received an overpayment of compensation in the amount of \$47,087.89. The Board has reviewed OWCP's calculations for the period September 1, 2015 through October 5, 2024, and finds that appellant received an overpayment of compensation in the amount of \$47,087.89.<sup>10</sup>

## **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>11</sup> Section 8129 of FECA<sup>12</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

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<sup>8</sup> *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, *id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>9</sup> *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

<sup>10</sup> *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

<sup>11</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>12</sup> 5 U.S.C. § 8129(a)-(b); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

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>13</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>14</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>15</sup>

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>16</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>17</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>18</sup>

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<sup>13</sup> *H.A.*, Docket No. 25-0556 (issued June 20, 2025); *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>14</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>15</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>16</sup> 20 C.F.R. § 10.437(a), (b).

<sup>17</sup> *Id.* at § 10.437(b)(1).

<sup>18</sup> *Id.* at § 10.438.

## **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.<sup>19</sup>

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. On his completed form OWCP-20, appellant reported \$5,529.89 in total monthly income, \$4,200.17 in total monthly expenses, and \$4,800.28 in total assets. Appellant's total monthly income exceeds his total monthly expenses by approximately \$1,330.00. Based on his reported expenses and income, his household income exceeded his expenses by more than \$50.00 per month. As appellant's income exceeds expenses by more than \$50.00, the Board finds that OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA.<sup>20</sup>

The Board 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 he has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the payment which created the overpayment.<sup>21</sup> The Board thus finds that OWCP properly denied waiver of recovery of the overpayment.

## **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.<sup>22</sup>

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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."<sup>23</sup> When an individual fails to provide the requested information on income, expenses

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<sup>19</sup> See *supra* notes 15 and 16.

<sup>20</sup> *Supra* note 14; *see also A.F.*, Docket No. 25-0192 (issued February 4, 2025).

<sup>21</sup> *See L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>22</sup> *M.P.*, Docket No. 18-0902 (issued October 16, 2018); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>23</sup> 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>24</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$1,300.00 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.<sup>25</sup> In this case, appellant responded to the preliminary overpayment determination by submitting a completed Form OWCP-20, reporting his income, assets, and expenses. However, OWCP required recovery at a rate higher than 25 percent. The record establishes that OWCP paid appellant \$1,455.03 in net compensation as of October 9, 2024. The Board notes that 25 percent of \$1,455.03 is \$363.75. The Board, therefore, finds that OWCP abused its discretion by deducting \$1,300.00 from appellant's continuing compensation payments, every 28 days.<sup>26</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$47,087.89, for the period September 1, 2015 through October 5, 2024, 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, but improperly required recovery of the overpayment by deducting \$1,300.00 from appellant's continuing compensation payments every 28 days.

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<sup>24</sup> *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

<sup>25</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.500.8c(1) (September 2018).

<sup>26</sup> *J.R.*, Docket No. 24-0852 (issued November 14, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 29, 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