

² The Board notes that following the March 20, 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.*

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; (3) whether OWCP properly required recovery of the overpayment by deducting \$291.18 from appellant's continuing compensation payments, every 28 days; and (4) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

FACTUAL HISTORY

On November 27, 2004, appellant, then a 51-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2004 he injured his lower back when carrying heavy mail parcels throughout the day while in the performance of duty. OWCP accepted the claim for lumbar sprain and displacement of lumbar intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the supplemental rolls, effective January 16, 2010, and on the periodic rolls, effective October 24, 2010.³

On December 12, 2022, OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

OWCP thereafter received a completed FERS/SSA dual benefits form from SSA dated January 24, 2023. The form indicated that appellant received SSA age-related retirement benefits as of August 2019 and provided SSA age-related retirement benefit rates with FERS offset. Beginning August 2019, the SSA rate with FERS was \$1,612.80 and without FERS was \$803.30. Beginning December 2019, the SSA rate with FERS was \$1,638.60 and without FERS was \$816.10. Beginning December 2020, the SSA rate with FERS was \$1,659.90 and without FERS was \$826.70. Beginning December 2021, the SSA rate with FERS was \$1,757.80 and without FERS was \$875.40. Beginning December 2022, the SSA rate with FERS was \$1,910.70 and without FERS was \$951.50.

On July 8, 2024, OWCP again requested information from SSA regarding potential FERS/SSA dual benefits.

OWCP thereafter received a completed FERS/SSA dual benefits form from SSA dated January 27, 2024. The form indicated that appellant received SSA age-related retirement benefits as of August 2019 and provided SSA age-related benefit rates with FERS offset. Beginning August 2019, the SSA rate with FERS was \$1,612.80 and without FERS was \$790.30. Beginning December 2019, the SSA rate with FERS was \$1,638.60 and without FERS was \$802.90. Beginning December 2020, the SSA rate with FERS was \$1,659.90 and without FERS was \$813.30. Beginning December 2021, the SSA rate with FERS was \$1,757.80 and without FERS was \$861.20. Beginning December 2022, the SSA rate with FERS was \$1,910.70 and without

³ OWCP mailed correspondence to appellant, including periodic financial disclosure statements (Form EN-1032), to his P.O. Box in Watsonville, California, which was his address of record. No evidence of non-delivery was received. Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee. A telephone call and/or EN-1032 Form does not constitute a formal change of address. See *L.H.*, Docket No. 23-1019 (issued December 26, 2023); *E.C.*, Docket No. 20-0578 (issued September 4, 2020) (appellant had not submitted a written change of address; therefore, she did not establish nonreceipt of OWCP's decision); *J.B.*, Docket No. 18-1704 (issued April 8, 2019); *M.P.*, Docket No. 17-0046 (issued June 9, 2017).

FERS was \$936.10. Beginning December 2023, the SSA rate with FERS was \$1,971.80 and without was \$966.00.

On September 9, 2024, OWCP requested clarification from SSA.

On September 23, 2024, OWCP received a response from SSA that the completed FERS/SSA dual benefits form dated January 24, 2023 was incorrect because the calculation erroneously excluded some of appellant's federal earnings. It also noted its July 15, 2024 calculations were final and accurate.

In a September 27, 2024 FERS offset overpayment calculation memorandum, OWCP computed a total overpayment amount of \$54,517.04 for the period August 1, 2019 through August 10, 2024. It determined that for the period August 1 through November 30, 2019, appellant received an overpayment in the amount of \$3,308.07; for the period December 1, 2019 through November 30, 2020, he received an overpayment in the amount of \$10,083.56; for the period December 1, 2020 through November 30, 2021, he received an overpayment in the amount of \$10,187.15; for the period December 1, 2021 through November 30, 2022, he received an overpayment in the amount of \$10,788.75; for the period December 1, 2022 through November 30, 2023, he received an overpayment in the amount of \$11,727.32; and for the period December 1, 2023 through August 10, 2024, he received an overpayment in the amount of \$8,422.19.

In a preliminary overpayment determination dated September 27, 2024, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$54,517.04 for the period August 1, 2019 through August 10, 2024, because it had failed to reduce his wage-loss compensation payments by the portion of his SSA age-related retirement benefits attributable to his federal service. It further advised him 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), to determine a reasonable recovery method and advised that he could request waiver of recovery of the overpayment. Additionally, OWCP notified appellant that he could request a final decision based on the written evidence or a precoupment hearing within 30 days.

By decision dated November 12, 2024, OWCP finalized the September 27, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$54,517.04 for the period August 1, 2019 through August 10, 2024 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 \$291.18 from appellant's continuing compensation payments every 28 days.

On March 10, 2025, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He also requested waiver of recovery of the overpayment as he was found to be without fault in the creation of the overpayment.⁴

By decision dated March 20, 2025, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing, as it was not made within 30 days of the September 27, 2024 preliminary overpayment determination and was therefore untimely filed.

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.⁵ 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.⁶

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.⁷ 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 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$54,517.04, for the period August 1, 2019 through August 10, 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 evidence of record establishes that, appellant received wage-loss compensation under FECA, and SSA age-related retirement benefits based upon his federal service for the same period. No appropriate offset was made. 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.⁹ Consequently, the fact of overpayment has been established.

⁴ Appellant attached a completed Form OWCP-20, wherein he reported total monthly income of \$2,211.00, total monthly expenses of \$4,552.00, and total assets of \$25,000.00.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁹ *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. SSA provided appellant's age-related retirement benefit rates with and without FERS for the period August 1, 2019 through August 10, 2024. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$54,517.04.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2019 through August 10, 2024, and finds that an overpayment of compensation in the amount of \$54,517.04 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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.¹⁴

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 recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

¹² 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).

¹³ *Id.* at § 10.437(a)(b).

¹⁴ *Id.* at § 10.437(b)(1); *see also C.H.*, Docket No. 16-0968 (issued August 8, 2016).

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

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the 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.¹⁷

In its preliminary overpayment determination dated September 27, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. Appellant, however, did not provide the requested financial information prior to OWCP's issuance of the November 12, 2024 final overpayment determination. 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

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b).

¹⁷ *Supra* note 11.

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).

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 \$291.18 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.²³ 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 November 12, 2024 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$291.18 from appellant's continuing compensation payments, every 28 days.²⁴

LEGAL PRECEDENT -- ISSUE 4

OWCP's regulations provide that a claimant may request a prerecoumpment hearing with respect to an overpayment.²⁵ The date of the request is determined by the postmark or other carrier's date marking, or the date received in the Employees' Compensation Operations and Management Portal (ECOMP).²⁶ Failure to request the prerecoumpment hearing within 30 days shall constitute a waiver of the right to a hearing.²⁷ The only right to a review of a final

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

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

²⁴ OWCP procedure provides that if a completed response is received within one year of the preliminary determination, the financial information should be thoroughly examined and if adjustment of the 25 percent is warranted, OWCP should set a reasonable rate of repayment with intent to recover the overpayment within three years. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.500.8c(1) (September 2018). As noted above, appellant submitted a completed Form OWCP-20 dated March 10, 2025 but did not provide supporting financial documentation. Accordingly, his response to the preliminary determination remains incomplete. *Supra* note 22; see also *A.P.*, Docket No. 24-0943 (issued December 10, 2024); *E.A.*, Docket No. 24-0810 (issued September 26, 2024).

²⁵ 20 C.F.R. § 10.432.

²⁶ *Id.* at §§ 10.439, 10.616(a); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

²⁷ 20 C.F.R. § 10.432; see also *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

overpayment decision is with the Board.²⁸ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.²⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

OWCP issued its preliminary overpayment determination on September 27, 2024. It advised appellant that he had 30 days from that date to request a prerecoupment hearing. The record reflects that OWCP's letter was properly mailed to appellant's last known address of record as of that date, and there is no indication that it was returned as undeliverable.³⁰

By decision dated November 12, 2024, OWCP finalized the September 27, 2024 preliminary overpayment determination.

On March 10, 2025, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions. OWCP's regulations provide that, when a final overpayment determination is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request.³¹ The only right to appeal is with the Board.³² As appellant's March 10, 2025 request for a prerecoupment hearing was made after the final overpayment determination, the Board finds that OWCP properly denied his request as untimely filed.³³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$54,517.04 for the period August 1, 2019 through August 10, 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. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$291.18 from

²⁸ 20 C.F.R. § 10.440(b).

²⁹ *Id.*

³⁰ *C.B.*, Docket No. 24-0188 (issued May 1, 2024); *A.S.*, Docket No. 23-0437 (issued February 16, 2024); *see also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

³¹ *Id.*

³² *Id.*; *see also A.B.*, Docket No. 18-1172 (issued January 15, 2019).

³³ *R.G.*, Docket No. 23-0719 (issued November 27, 2023); *R.S.*, Docket No. 20-0624 (issued February 9, 2022); *J.R.*, Docket No. 20-1215 (issued June 17, 2021).

appellant's continuing compensation payments every 28 days. The Board also finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2024 and March 20, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2025
Washington, DC

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

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

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