

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

M.T., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. COAST GUARD SECTOR NORTHERN
NEW ENGLAND, Portland, ME, Employer**

Docket No. 25-0493

Issued: June 10, 2025

Appearances:
Appellant, pro se
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 April 22, 2025 appellant filed a timely appeal from a March 28, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,397.71, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period July 25, 2023 through

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 28, 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.*

September 7, 2024, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 20, 2005 appellant, then a 52-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2005 he injured his left knee when carrying a ladder while in the performance of duty.³ OWCP accepted the claim for tear of the left knee medial meniscus. It later expanded its acceptance of the claim to include post-traumatic arthrosis of medial joint compartment and traumatic arthropathy, left knee. Appellant underwent OWCP-authorized tendon-sparing total arthroplasty of the left knee on July 25, 2023. OWCP paid him wage-loss compensation on the supplemental rolls effective July 25, 2023, and on the periodic rolls effective December 31, 2023.

The case record indicates that appellant's retirement coverage is under the Federal Employees Retirement System (FERS).

On June 3, 2024 OWCP requested information from SSA regarding potential dual benefits.

OWCP thereafter received a completed dual benefits form from SSA dated June 6, 2024. The form indicated that appellant received SSA age-related retirement benefits as of November 2018 and provided appellant's SSA age-related benefit rates with and without federal service. Beginning January 2023, the SSA rate with federal service was \$2,626.50 and without federal service was \$1,182.60. Beginning December 2023, the SSA rate with federal service was \$2,710.50 and without federal service was \$1,220.40.

On August 2, 2024 OWCP notified appellant that his wage-loss compensation payments would be adjusted to reflect an offset of \$1,406.10 per 28-day pay period for his SSA age-related retirement benefits attributable to his federal service. Beginning August 10, 2024, OWCP accordingly adjusted appellant's wage-loss compensation to \$2,803.26 per 28-day pay period.

In a September 26, 2024 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$17,397.71 for the period July 25, 2023 through September 7, 2024 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It provided an offset overpayment calculation, in which it used the information provided by SSA on June 6, 2024 to calculate the 28-day offset for the relevant periods. OWCP determined that, during the period July 25 through November 30, 2023, appellant received an overpayment in the amount of \$6,140.54 and during the period December 1, 2023 through September 7, 2024, he received an overpayment in the amount of \$13,853.05. It noted the total overpayment amount was

³ OWCP assigned the present claim OWCP File No. xxxxxx027. The record reflects that appellant filed a claim for a January 15, 2004 left knee traumatic injury, to which OWCP assigned OWCP File No. xxxxxx721. He also filed a subsequent claim for an August 7, 2009 right knee traumatic injury, which OWCP accepted for right knee medial meniscus tear and post-traumatic arthrosis of the medial joint compartment of the right knee under OWCP File No. xxxxxx885. OWCP has administratively combined OWCP File Nos. xxxxxx027, xxxxxx721, and xxxxxx885, with the latter serving as the master file.

\$19,993.59 and deducted a previously-withheld amount of \$2,595.88,⁴ resulting in a final total overpayment amount of \$17,397.71. OWCP further advised appellant 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), and 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. Additionally, it notified him that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On October 7, 2024 appellant requested waiver of recovery of the overpayment and a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He submitted a completed Form OWCP-20, dated October 7, 2024, wherein he reported total monthly income of \$2,803.26, total monthly expenses of \$3,030.00, and total assets of \$38,200.00. No supporting financial documentation was received.

A prerecoupment hearing was held on January 13, 2025. OWCP subsequently received an updated Form OWCP-20 dated January 20, 2025, wherein appellant reported total monthly income of \$3,210.00, total monthly expenses of \$2,665.00, and total assets of \$74,649.06. He attached supporting financial documentation.⁵

By decision dated March 28, 2025, OWCP hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$17,397.71 during the period July 25, 2023 through September 7, 2024 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, 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 of the overpayment, because the evidence of record was insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.

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.⁶ 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.⁷

⁴ OWCP withheld \$1,297.94 from continuing compensation for two 28-day periods covering July 14 through September 7, 2024, for a total withholding of \$2,595.88.

⁵ Appellant elected to receive retirement benefits from Office of Personnel Management (OPM) in lieu of FECA benefits effective, March 1, 2025.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,397.71, for the period July 25, 2023 through September 7, 2024, for which he was without fault, because he concurrently received FECA wage-loss compensation payments and SSA age-related retirement benefits, without an appropriate offset.

The evidence of record indicates that, while appellant was receiving FECA wage-loss compensation, he was also receiving SSA age-related retirement benefits that were attributable to his federal service, without appropriate offset. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to his federal service commencing November 1, 2018. No appropriate offset was made to his FECA wage-loss compensation. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.

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 benefit rates with federal service and without federal service for the period July 25, 2023 through September 7, 2024. It provided its calculations for each relevant period based on the information provided by SSA and determined that he received an overpayment in the amount of \$19,993.59. OWCP then deducted the FERS offset previously withheld of \$2,595.88, resulting in a total remaining overpayment of \$17,397.71.

The Board has reviewed OWCP's calculations for the period July 25, 2023 through September 7, 2024 and finds that appellant received an overpayment of compensation in the amount of \$17,397.71.

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.¹¹

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

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8129(a)-(b).

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.¹²

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 and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹³ 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 \$50.00.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

ANALYSIS -- ISSUE 2

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

¹² *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).

¹³ 20 C.F.R. § 10.436(a)(b).

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁵ *Id.* at Chapter 6.400.4a(2).

¹⁶ *Id.* at Chapter 6.400.4b(3).

¹⁷ *Id.* at Chapter 6.400.4b(3)(a), (b).

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

¹⁹ *Supra* note 14 at Chapter 6.400.4c(3).

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.²⁰

On his October 7, 2024 and January 20, 2025 OWCP-20 forms, appellant reported total assets of \$38,200.00 and \$74,649.06, respectively. As explained 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 an individual with a spouse or dependent.²¹ As his reported assets exceed the allowable resource base, the Board finds that he has not met the standard for waiver of recovery.²² 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.²³

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.²⁴ Appellant has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that he has relinquished a valuable right, or changed his position for the worse in reliance on the payments which created the overpayment.²⁵

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.²⁶

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,397.71, for the period July 25, 2023 through September 7, 2024, for which he was without fault, because he concurrently received FECA wage-loss

²⁰ *Supra* note 12.

²¹ *Supra* note 14 at Chapter 6.400.4a(2).

²² *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

²³ *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

²⁴ *See J.D.*, Docket No. 94-2567 (issued October 17, 1996).

²⁵ *See B.C.*, Docket No. 19-0629 (issued June 2, 2020); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²⁶ *J.R.*, Docket No. 24-0852 (issued November 14, 2024); *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

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.²⁷

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 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

²⁷ With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *See T.C.*, Docket No. 21-0612 (issued December 2, 2021); *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).