

² The Board notes that following the April 17, 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; and (3) whether OWCP properly required recovery of the overpayment by deducting \$525.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On July 1, 2003 appellant, then a 59-year-old lead transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his lower back when he bent over and picked up a 61-pound bag while in the performance of duty. OWCP accepted the claim for lumbosacral strain and right lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls effective September 2, 2003, and on the periodic rolls effective October 3, 2004.

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

On October 7, 2024 OWCP requested information from SSA regarding potential dual benefits.

OWCP thereafter received a completed dual benefits form from SSA dated October 22, 2024. The form indicated that appellant received SSA age-related retirement benefits as of October 2008 and provided appellant's SSA age-related retirement benefit rates with and without federal service. Beginning October 2008, the SSA rate with federal service was \$1,241.70 and without federal service was \$1,156.30. Beginning December 2008 and December 2010, the SSA rate with federal service was \$1,313.60 and without federal service was \$1,223.30. Beginning December 2011, the SSA rate with federal service was \$1,360.80 and without federal service was \$1,267.30. Beginning December 2012, the SSA rate with federal service was \$1,383.90 and without federal service was \$1,288.90. Beginning December 2013, the SSA rate with federal service was \$1,404.70 and without federal service was \$1,308.10. Beginning December 2014 and December 2015, the SSA rate with federal service was \$1,428.50 and without federal service was \$1,330.30. Beginning December 2016, the SSA rate with federal service was \$1,432.70 and without federal service was \$1,334.30. Beginning December 2017, the SSA rate with federal service was \$1,461.30 and without federal service was \$1,360.90. Beginning December 2018, the SSA rate with federal service was \$1,502.20 and without federal service was \$1,399.00. Beginning December 2019, the SSA rate with federal service was \$1,526.20 and without federal service was \$1,421.30. Beginning December 2020, the SSA rate with federal service was \$1,546.00 and without federal service was \$1,439.80. Beginning December 2021, the SSA rate with federal service was \$1,637.20 and without federal service was \$1,524.60. Beginning December 2022, the SSA rate with federal service was \$1,779.60 and without federal service was \$1,657.30. Beginning December 2023, the SSA rate with federal service was \$1,836.50 and without federal service was \$1,710.30.

On November 19, 2024 OWCP notified appellant that his wage-loss compensation payments would be adjusted to reflect an offset of \$116.49 per 28-day pay period for his SSA age-related retirement benefits attributable to his federal service. Beginning November 30, 2024, OWCP accordingly adjusted appellant's net wage-loss compensation to \$2,063.51 per 28-day pay period.

In a January 22, 2025 preliminary overpayment determination, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$18,944.48 for the period October 1, 2008 through November 2, 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 October 22, 2024 to calculate the 28-day offset for the relevant periods. OWCP determined that, during the period October 1 through November 30, 2008, appellant received an overpayment in the amount of \$171.74; during the period December 1, 2008 through November 30, 2009, he received an overpayment in the amount of \$1,086.53; during the period December 1, 2009 through November 30, 2010, he received an overpayment in the amount of \$1,086.53; during the period December 1, 2010 through November 30, 2011, he received an overpayment in the amount of \$1,086.53; during the period December 1, 2011 through November 30, 2012, he received an overpayment in the amount of \$1,128.20; during the period December 1, 2012 through November 30, 2013, he received an overpayment in the amount of \$1,143.10; during the period December 1, 2013 through November 30, 2014, he received an overpayment in the amount of \$1,162.39; during the period December 1, 2014 through November 30, 2015, he received an overpayment in the amount of \$1,181.69; during the period December 1, 2015 through November 30, 2016, he received an overpayment in the amount of \$1,184.93;³ during the period December 1, 2016 through November 30, 2017, he received an overpayment in the amount of \$1,184.03; during the period December 1, 2017 through November 30, 2018, he received an overpayment in the amount of \$1,208.15; during the period December 1, 2018 through November 30, 2019, he received an overpayment in the amount of \$1,241.78; during the period December 1, 2019 through November 30, 2020, he received an overpayment in the amount of \$1,265.71; during the period December 1, 2020 through November 30, 2021, he received an overpayment in the amount of \$1,277.89; during the period December 1, 2021 through November 30, 2022, he received an overpayment in the amount of \$1,354.93; during the period December 1, 2022 through November 30, 2023, he received an overpayment in the amount of \$1,471.60; during the period December 1, 2023 through April 11, 2024, he received an overpayment in the amount of \$553.33; during the period April 12 through October 5, 2024, he received an overpayment of \$736.38; and during the period October 6 through November 2, 2024 he received an overpayment of \$116.49. It noted the total overpayment amount was \$19,641.92 and deducted a previously-withheld amount of \$697.44,⁴ resulting in a final total overpayment amount of \$18,944.48. 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

³ The Board notes that although the SSA rates with and without federal service from December 1, 2014 through November 30, 2015, and December 1, 2015 through November 30, 2016 were the same, the overpayment amount differs for the latter period because calendar-year 2016 was a leap year and, therefore, there were 366 days between December 1, 2015 and November 30, 2016.

⁴ By letter dated February 13, 2024, OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous 15 months, and that a Form EN-1032 was enclosed for that purpose. By decision dated April 12, 2024, OWCP suspended appellant's wage-loss compensation benefits, effective that date, due to his failure to submit the Form EN-1032, as requested. On April 24, May 9, July 8, August 9 and 26, and September 4, 2024 OWCP received completed Forms EN-1032. On August 11, 2024 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated September 9, 2024, an OWCP hearing representative set aside the April 12, 2024 decision and remanded the case for reinstatement of benefits retroactive to the date of suspension. On October 9, 2024 OWCP issued a retroactive compensation payment for the period April 12 through October 5, 2024. It withheld \$602.18 from appellant's compensation for the period April 12 through October 5, 2024, and \$95.26 from his compensation for the period October 6 through November 2, 2024, for a total withholding of \$697.44.

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.

In an overpayment action request form dated February 4, 2025, appellant requested a decision based on the written evidence. He also requested waiver of recovery and submitted a letter dated February 3, 2025 asserting that he should not be held accountable for the error that led to the overpayment. Appellant did not submit a completed Form OWCP-20 nor supporting financial documentation as requested.

By decision dated April 17, 2025, OWCP finalized the January 22, 2025 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$18,944.48 for the period October 1, 2008 through November 2, 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 \$525.00 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.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 \$18,944.48, for the period October 1, 2008 through November 2,

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).

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.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to his federal service commencing October 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 October 1, 2018 through November 2, 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 \$19,641.92. OWCP then deducted the FERS offset previously withheld of \$697.44, resulting in a total remaining overpayment of \$18,944.48.

The Board has reviewed OWCP's calculations for the period October 1, 2018 through November 2, 2024 and finds that appellant received an overpayment of compensation in the amount of \$18,944.48.

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 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.¹¹

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.¹² 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

⁹ *Supra* note 8.

¹⁰ 5 U.S.C. § 8129(a)-(b).

¹¹ *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).

¹² 20 C.F.R. § 10.436(a)(b).

\$50.00.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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.¹⁹

In its preliminary overpayment determination dated January 22, 2025, 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 April 17, 2025 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.²⁰

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁴ *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3).

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

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

¹⁸ *Supra* note 13 at Chapter 6.400.4c(3).

¹⁹ *Supra* note 11.

²⁰ 20 C.F.R. § 10.438.

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.²¹

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.²²

Section 10.441 of OWCP's regulations²³ 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.²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$525.00 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.²⁵ 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 April 17, 2025 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$525.00 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 \$18,944.48 for the period October 1, 2018 through November 2, 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

²¹ See *E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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

²³ *Id.* at § 10.441(a).

²⁴ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

finds that OWCP properly required recovery of the overpayment by deducting \$525.00 from appellant's continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 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