

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

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L.D., Appellant

and

DEPARTMENT OF THE AIR FORCE,  
PETERSON AIR FORCE BASE,  
Colorado Springs, CO, Employer

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**Docket No. 26-0061**  
**Issued: February 27, 2026**

*Appearances:*  
*Appellant, pro se*  
*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 November 2, 2025 appellant filed a timely appeal from a May 6, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,167.08 for the period August 1, 2019 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,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the May 6, 2025 decision, appellant submitted additional evidence to OWCP and with his appeal to the Board. 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.*

without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the \$39,167.08 overpayment of compensation; and (3) whether OWCP properly required recovery of the overpayment by deducting \$1,100.00 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 as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are set forth below.

On January 17, 2003 appellant, then a 53-year-old contracting officer, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries due to factors of his federal employment. He noted that he first became aware of his condition on July 1, 1988 and realized its relation to his federal employment on August 10, 2002. Appellant stopped work on April 14, 2003. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral reflex sympathetic dystrophy of the upper extremities. OWCP paid him wage-loss compensation on the supplemental rolls as of April 14, 2003 and on the periodic rolls as of May 18, 2003.

In a January 12, 2003 Notification of Personnel Action (Standard Form 50), the employing establishment indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

OWCP provided SSA with a dual benefits form, requesting that it report appellant's SSA age-related retirement benefit rates with and without FERS.

On June 25, 2024 SSA returned a completed dual benefits form reporting SSA age-related retirement benefit rates with and without FERS for the period August 1, 2019 through December 1, 2023. On July 23, 2024 OWCP requested clarification from the SSA regarding the rate information.

On October 16, 2024 SSA submitted a corrected SSA dual benefits form, reporting appellant's age-related retirement benefit rates with and without FERS. Beginning August 2019, the SSA rate with FERS was \$3,242.90 and without FERS was \$2,671.50; beginning December 2019, the SSA rate with FERS was \$3,294.80 and without FERS was \$2,714.10; beginning December 2020, the SSA rate with FERS was \$3,337.60 and without FERS was \$2,749.40; beginning December 2021, the SSA rate with FERS was \$3,534.40 and without FERS was \$2,911.50; beginning December 2022, the SSA rate with FERS was \$3,841.80 and without FERS was \$3,164.70; and beginning December 2023, the SSA rate with FERS was \$3,964.70 and without FERS was \$3,265.90.

In a letter dated October 21, 2024, OWCP advised appellant that, effective November 2, 2024, his FECA wage-loss compensation would be offset by his SSA age-related retirement

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<sup>3</sup> Docket No. 20-1344 (issued March 9, 2023); *Order Remanding Case*, Docket No. 18-1347 (issued September 17, 2019); Docket No. 15-1102 (issued January 20, 2016); Docket No. 12-1408 (issued April 26, 2013), *Order Granting Petition for Reconsideration and Modifying its Prior Decision*, Docket No. 12-1408 (issued July 21, 2014).

benefits every 28 days, in the amount of \$645.05. Appellant's new net wage-loss compensation payments every 28 days would be \$5,937.86.

In an October 22, 2024 SSA/FERS offset overpayment calculation worksheet, OWCP determined that from August 1 through November 30, 2019, appellant received an overpayment in the amount of \$2,298.18; for the period December 1, 2019 through November 30, 2020, he received an overpayment in the amount of \$7,006.68; for the period December 1, 2020 through November 30, 2021, he received an overpayment in the amount of \$7,077.74; for the period December 1, 2021 through November 30, 2022, he received an overpayment in the amount of \$7,495.28; for the period December 1, 2022 through November 30, 2023, he received an overpayment in the amount of \$8,147.58; and for the period December 1, 2023 through October 5, 2024, he received an overpayment in the amount of \$7,141.63, for a total overpayment of \$39,167.08.

On October 23, 2024 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$39,167.08 for the period August 1, 2019 through October 5, 2024 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. 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 precoupment hearing within 30 days.

In an overpayment action request form postmarked November 22, 2024, appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review, noting that he disagreed that the overpayment had occurred. A copy of a blank Form OWCP-20 was submitted.

A hearing was held on March 4, 2025. No financial information was received.

By decision dated May 6, 2025, OWCP's hearing representative finalized the October 23, 2024 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$39,167.08 for the period August 1, 2019 through October 5, 2024, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. The hearing representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery. The hearing representative required recovery of the overpayment by deducting \$1,100.00 from his continuing compensation payments every 28 days.<sup>4</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his

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<sup>4</sup> The record reflects that as of the date of the final overpayment determination, appellant received \$4,470.13 net compensation every 28 days.

or her federal employment.<sup>5</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>6</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>7</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>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,167.08 for the period August 1, 2019 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 evidence of record establishes that appellant received wage-loss compensation under FECA and SSA age-related retirement benefits based on his federal service for the same period. No appropriate offset was made. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> Consequently, the fact of overpayment has been established.<sup>10</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. SSA reported appellant's age-related retirement benefit rates with and without FERS for the period August 1, 2019 through October 5, 2024. OWCP provided its overpayment calculations for this period, based on the information provided by SSA. The Board has reviewed OWCP's calculations and finds that an overpayment of compensation in the amount of \$39,167.08 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.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

<sup>7</sup> 20 C.F.R. § 10.421(d).

<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>9</sup> *J.J.*, Docket No. 25-0778 (issued December 2, 2025); *E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>10</sup> *J.J.*, *id.*; *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>11</sup> 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.<sup>12</sup>

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

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.

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 or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>16</sup> 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the \$39,167.08 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

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<sup>12</sup> *J.J.*, *supra* note 9; *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).

<sup>13</sup> 20 C.F.R. § 10.436(a)(b).

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

<sup>15</sup> *Id.* at Chapter 6.400.4a(2).

<sup>16</sup> 20 C.F.R. § 10.438(a); *P.D.*, Docket No. 24-0923 (issued October 15, 2024); *D.P.*, Docket No. 21-0187 (issued August 12, 2024); *P.N.*, Docket No. 20-1159 (issued April 20, 2021); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>17</sup> *Id.* at 10.438(b).

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.<sup>18</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>19</sup>

In its preliminary overpayment determination dated October 3, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial documentation to support income and expenses. Appellant, however, did not provide the requested financial information.<sup>20</sup> As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>21</sup> The Board thus finds that OWCP properly denied waiver of recovery of the overpayment.<sup>22</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides 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 the error is discovered or his 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.<sup>23</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,100.00 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>24</sup> 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 final overpayment determination. The Board, therefore, finds that OWCP properly required recovery of the

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<sup>18</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>19</sup> 20 C.F.R. § 10.438; *P.D.*, *supra* note 16; *D.P.*, *supra* note 16; *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>20</sup> *Id.*

<sup>21</sup> *P.D.*, *supra* note 16; *D.P.*, *supra* note 16; *B.G.*, *supra* note 19; *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>22</sup> 20 C.F.R. § 10.438; *Id.*

<sup>23</sup> *Id.* at § 10.441(a).

<sup>24</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018).

overpayment by deducting \$1,100.00 from appellants' 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 \$39,167.08, for the period August 1, 2019 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 \$39,167.08 overpayment of compensation and properly required recovery of the overpayment by deducting \$1,100.00 from appellant's continuing compensation payments, every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2026  
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