

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

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D.M., Appellant)	
)	
and)	Docket No. 24-0502
)	Issued: March 12, 2026
U.S. POSTAL SERVICE, BEAUMONT POST OFFICE, Louisville, KY, Employer)	
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Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 12, 2024 appellant, through counsel, filed a timely appeal from a March 28, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,030.00 for the period September 10, 2022 through August 12, 2023, for which he

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

was without fault, because OWCP failed to properly deduct life insurance premiums from his FECA wage-loss compensation; (2) whether appellant received an overpayment of compensation in the amount of \$14,286.61 for the period May 1, 2022 through September 9, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security (SSA) age-related retirement benefits, without an appropriate offset; (3) whether OWCP properly denied waiver of recovery of the overpayments of compensation; and, (4) whether OWCP properly required recovery of both overpayments by deducting \$184.62 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On July 30, 2021 appellant, then a 66-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 6, 2021 he strained his left shoulder while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). On November 17, 2021 OWCP accepted the claim for left rotator cuff tear arthropathy. OWCP paid appellant wage-loss compensation on the supplemental rolls from September 11 through November 6, 2021, and on the periodic compensation rolls effective November 7, 2021.

By letter dated June 23, 2023, the Office of Personnel Management (OPM) informed OWCP that, as a compensationner, appellant was eligible to continue her life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) program. The final base salary on which FEGLI was based was \$73,802.00. It requested that OWCP deduct premiums for the following life insurance elections: basic life insurance (BLI) with no reduction, and Option B (Additional Optional Insurance) at 2X with no reduction. OPM noted that the commencement date for the basic and optional life insurance premiums was September 10, 2022.

On a Continuation of Life Insurance Coverage as an Annuitant or Compensationner form (SF-2818), signed on October 13, 2022, appellant elected the following life insurance coverage: BLI with no reduction and Option B at 2X with no reduction. On August 8, 2023 OWCP received a FERS/SSA dual benefits form from SSA. The form provided appellant's SSA age-related retirement benefit rates with and without federal service. It indicated that, beginning in May 2022, his SSA rate with federal service was \$2,023.10 and without federal service \$1,203.20; beginning in December 2022, his rate with federal service was \$2,199.00 and without federal service \$1,307.90; and beginning January 2023, his SSA rate with federal service was \$2,255.00 and without federal service \$1,341.20.

On August 23, 2023 OWCP prepared worksheets showing calculations of appellant's life insurance payments based on salary of \$67,237.00 and what should have been deducted based on appellant's final salary of \$73,802.00 for the period September 10, 2022 through August 12, 2023.

On October 19, 2023 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation had been created for the period September 10, 2022 through August 12, 2023, in the amount of \$2,030.00. It explained that the overpayment occurred because life insurance premiums were not properly deducted from appellant's continuing compensation. OWCP explained in detail how the overpayment was calculated. It 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). OWCP further requested that appellant submit supporting financial documentation including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records. Additionally, it advised 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. OWCP afforded appellant 30 days to respond.

On October 31, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the life insurance overpayment.

On November 14, 2023 OWCP prepared a FERS offset overpayment calculation worksheet verifying its calculations. The worksheet showed that, during the period May 1 through November 30, 2022, appellant received an overpayment of compensation in the amount of \$5,784.34; during the period December 1 through 31, 2022 he received an overpayment of compensation in the amount of \$910.68; and during the period January 1 through September 9, 2023 he received an overpayment of compensation in the amount of \$7,591.59, for a total overpayment of \$14,286.61.

In a preliminary overpayment determination dated November 14, 2023, OWCP found that an overpayment of compensation in the amount of \$14,286.61 had been created. It explained that the overpayment occurred because a portion of appellant's SSA age-related retirement benefits that he received for the period May 1, 2022 through September 9, 2023 was based on credits earned while working in federal service, and that this portion of his SSA benefit was a prohibited dual benefit. OWCP 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 a Form OWCP-20. It further requested that appellant submit supporting financial documentation including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records. Additionally, OWCP advised 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. It afforded appellant 30 days to respond.

On November 30, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and waiver of recovery of the SSA FERS offset overpayment.

In a Form OWCP-20, dated January 4, 2024, appellant reported total monthly income of \$4,650.78, total monthly expenses of \$4,456.57, and total assets of approximately \$19,895.40. He argued that he would not have received SSA benefits if he had known about the offset, and that he had detrimentally relied on the SSA age-related retirement benefits by purchasing a used truck.

On February 15, 2023 a hearing was held before a representative of OWCP's Branch of Hearings and Review in regard to both the life insurance and SSA FERS offset preliminary overpayment determinations.

By decision dated March 28, 2024, OWCP's hearing representative finalized both of the preliminary overpayment determinations. With regard to the October 19, 2023 preliminary

overpayment determination, the hearing representative found that the evidence supported that for the period September 10, 2022 through August 12, 2023, OWCP failed to properly deduct life insurance premiums from her FECA wage-loss compensation. With regard to the November 14, 2023 preliminary overpayment determination, the hearing representative found that appellant had received an overpayment of compensation in the amount of \$14,286.61 for the period May 1, 2022 through September 9, 2023 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 both overpayments, but denied waiver of recovery. He required recovery of the overpayments by deducting \$184.62 from appellant's continuing compensation every 28 days.

LEGAL PRECEDENT -- ISSUE 1

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.³ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁴

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$2,030.00 during the period September 10, 2022 through August 12, 2023, for which he was without fault, because OWCP failed to properly deduct life insurance premiums from his FECA wage-loss compensation.

On June 23, 2023, OPM informed OWCP that, as a compensationner, appellant was eligible to continue her life insurance coverage under the FEGLI program. The final base salary on which FEGLI was based was \$73,802.00. It requested that OWCP deduct premiums for the following life insurance elections: BLI with no reduction, and Option B at 2X with no reduction. OPM noted that the commencement date for the basic and optional life insurance premiums was September 10, 2022. Appellant's SF-2818, signed on October 13, 2022, elected the following life insurance coverage: BLI with no reduction and Option B, at 2X with no reduction. The case record, however, establishes that OWCP failed to properly deduct the appropriate life insurance premiums from appellant's FECA wage-loss compensation for the period September 10, 2022

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ 5 U.S.C. § 8707(d); *see also D.R. (G.R.)*, Docket No. 19-1675 (issued October 8, 2020); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

through August 12, 2023. The Board thus finds that appellant received an overpayment of compensation for the period September 10, 2022 through August 12, 2023.

With regard to the amount of the overpayment, the case record contains compensation payment records, as well as a worksheet explaining the calculation of the overpayment. The Board has reviewed OWCP's calculations for the period September 10, 2022 through August 12, 2023 and finds that appellant received an overpayment of compensation in the amount of \$2,030.00.⁶

LEGAL PRECEDENT -- ISSUE 2

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.⁷ 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.⁸ When an overpayment of compensation has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁹

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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,286.61 during the period May 1, 2022 through September 9, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its March 28, 2024 decision, OWCP found that an overpayment of compensation was created for the period May 1, 2022 through September 9, 2023. The overpayment was based on

⁶ See *J.K.*, Docket No. 24-0784 (issued January 30, 2026); *J.S.*, Docket No. 19-0824 (issued October 4, 2019); *W.*, Docket No. 19-0451 (issued August 7, 2019).

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8116.

⁹ *Id.* at § 8129(a).

¹⁰ 20 C.F.R. § 10.421(d); see also *J.S.*, *supra* note 6; *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹¹ FECA Bulletin No. 97-09 (issued February 3, 1997); see also *C.N.*, Docket No. 24-0034 (issued March 27, 2024); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.¹² The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant beginning May 2022. Thus, the Board finds that fact of overpayment has been established.

With regard to the amount of the overpayment, SSA provided appellant's SSA age-related retirement benefit rates with and without federal service, beginning May 2022. Based on this information, OWCP provided its calculations for the period May 1, 2022 through September 9, 2023. The Board has reviewed OWCP's calculations for the period May 1, 2022 through September 9, 2023, and finds that an overpayment of compensation in the amount of \$14,286.61 was created.¹³

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an overpayment of compensation shall be recovered by OWCP 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.¹⁴ 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 on 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.¹⁵

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹⁶

Section 10.436 provides that 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 current 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.¹⁷ For waiver under

¹² 5 U.S.C. § 8116(d)(2); *C.N., id.*; *see also L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

¹³ *See C.N., id.*; *M.H.*, Docket No. 19-1497 (issued September 9, 2020); *M.B.*, Docket No. 18-1101 (issued January 17, 2019).

¹⁴ 5 U.S.C. § 8129.

¹⁵ 20 C.F.R. § 10.438.

¹⁶ *Id.* at §§ 10.434-10.437.

¹⁷ *Id.* at § 10.436.

the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹⁸ An individual is deemed to need substantially all or his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁹

OWCP's procedures provide that the 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.²⁰ 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. 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, and 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.²¹

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.²²

OWCP 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.²³

ANALYSIS -- ISSUE 3

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

As OWCP found appellant without fault in the creation of both overpayments, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the

¹⁸ *Id.*

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

²⁰ *Id.* at Chapter 6.400.4a(2).

²¹ *Id.* at Chapter 6.400.4b(3)(a), (b).

²² 20 C.F.R. § 10.437(a)(b).

²³ *Id.* at § 10.438(a).

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.²⁴

On a completed Form OWCP-20, appellant reported total monthly income of \$4,650.78 and total monthly expenses of \$4,456.57. Appellant's monthly income, therefore, exceeded his ordinary and necessary living expenses by more than the statutory limit of \$50.00. Thus, he did not need substantially all of his income for ordinary and necessary living expenses such that recovery would defeat the purpose of FECA.²⁵

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. Appellant argued that he had detrimentally relied on the full SSA age-related retirement benefits when he purchased a used truck. The Board has held, however, that conversion of a liquid asset into real or personal property does not constitute a loss.²⁶ There is no evidence that appellant gave up a valuable right or changed his position for the worse. Rather, appellant simply converted his assets from one form to another by purchasing tangible property from which he derived some benefit.²⁷ He also argued that he would not have received SSA benefits if he had known about the offset. However, 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.²⁸ Appellant has not done so in this case. Thus, OWCP properly found that appellant did not establish that recovery would be against equity and good conscience.

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 both overpayments.

²⁴ *Supra* note 14; *see M.B.*, Docket No. 23-0775 (issued March 11, 2024); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

²⁵ *S.R.*, Docket No. 20-0818 (issued June 28, 2022); *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

²⁶ *Supra* note 19 at Chapter 6.400.4c(3) (September 2020); *see also M.B.*, *supra* note 13; *J.B.*, Docket No. 15-1043 (issued August 6, 2015); *O.C.*, Docket No. 09-0483 (issued October 8, 2009); *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

²⁷ *See J.B.*, *id.*

²⁸ *Id.*

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁹

Section 10.441 of OWCP's regulations provides in pertinent part: 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 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.³⁰

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly required recovery of the overpayments by deducting \$184.62 from appellant's continuing compensation payments, every 28 days.

In determining whether appellant could repay the overpayments by deducting from his continuing compensation payments, OWCP took into account the factors set forth in 20 C.F.R. § 10.441, and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.³¹ Thus, the Board finds that OWCP properly required recovery of the overpayment by deducting \$184.62 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 \$2,030.00 during the period September 10, 2022 through August 12, 2023, for which he was without fault, because OWCP failed to properly deduct life insurance premiums from his FECA wage-loss compensation. The Board also finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$14,286.61 during the period May 1, 2022 through September 9, 2023, 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 overpayments of compensation and properly required recovery of the overpayments by deducting \$184.62 from appellant's continuing compensation payments, every 28 days.

²⁹ 20 C.F.R. § 10.441; *see C.B.*, Docket No. 20-0031 (issued July 27, 2020).

³⁰ *Id.*

³¹ *See C.S.*, Docket No. 23-0587 (issued July 9, 2025); *J.B.*, Docket No. 24-0876 (issued September 26, 2024); *L.F.*, Docket No. 15-0489 (issued May 11, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2026
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