

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

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B.C., Appellant)	
)	
and)	Docket No. 20-0669
)	Issued: December 16, 2021
DEPARTMENT OF THE NAVY, NAVAL AIR)	
STATION PATUXENT RIVER,)	
Patuxent River, MD, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 31, 2020 appellant filed a timely appeal from a November 25, 2019 merit decision and a January 23, 2020 nonmerit 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$32,183.24, 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 June 1, 2015 through March 1, 2019, 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 \$2,000.00 from appellant's continuing compensation payments every 28 days; and (4) whether

¹ 5 U.S.C. § 8101 *et seq.*

OWCP properly denied appellant's request for a hearing before its Branch of Hearings and Review pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On February 18, 2000 appellant, then a 46-year-old systems accountant, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2000 he sustained a neck injury due to slipping and falling at a bowling alley when he was on travel duty status while in the performance of duty. He stopped work on March 6, 2000. OWCP accepted appellant's claim for aggravation of cervical stenosis with myelopathy, Brown-Sequard syndrome of the cervical spine, and myelomalacia of the cervical spine. It paid him wage-loss compensation for disability from work on the periodic rolls commencing June 16, 2002.

In a form signed on February 6, 2013, appellant elected to receive FECA compensation instead of compensation under the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System.

On March 13, 2019 OWCP provided a dual benefits calculation form to SSA with a computation period listed as June 1, 2015 to present. On March 15, 2019 SSA completed the dual benefits calculation form, which listed appellant's SSA age-related retirement benefit rates with and without a FERS offset from June 2015 through December 2018 as follows: beginning June 2015, the SSA rate with FERS was \$2,114.00 and without FERS was \$1,418.70; beginning December 2016 the SSA rate with FERS was \$2,120.30 and beginning December 2015 the SSA rate without FERS was \$1,418.70; beginning December 2017 the SSA rate with FERS was \$2,162.70 and beginning December 2016 the SSA rate without FERS was \$1,422.90; beginning April 2018 the SSA rate with FERS was \$2,162.70 and beginning December 2017 the SSA rate without FERS was \$1,451.30; and beginning December 2018 the SSA rate with FERS was \$2,223.20 and without FERS was \$1,491.90.

On April 23, 2019 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculations of appellant's overpayment from June 1, 2015 through March 30, 2019. It determined: during the period June 1 through November 30, 2016, appellant received an overpayment of \$12,584.17; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$8,442.33; for the period December 1, 2017 through March 31, 2018, appellant received an overpayment of \$2,951.07; for the period April 1 through November 30, 2018, appellant received an overpayment of \$5,722.47; and for the period December 18, 2018 through March 30, 2019, appellant received an overpayment of \$2,483.21. The total overpayment was determined to be \$32,183.24.

Also on April 23, 2019 OWCP prepared a "corrected copy" FERS offset overpayment calculation worksheet wherein it noted the calculations of appellant's overpayment from June 1, 2015 through March 30, 2019. It determined: during the period June 1 through November 30, 2016, appellant received an overpayment of \$12,584.17; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment of \$8,442.33; for the period December 1, 2017 through March 31, 2018, appellant received an overpayment of \$2,951.07; for the period April 1 through November 30, 2018, appellant received an overpayment of \$5,722.47; and for the period December 1, 2018 through March 30, 2019, appellant received an overpayment of \$2,893.05. The total overpayment was determined to be \$32,593.09.

On May 6, 2019 OWCP issued a preliminary overpayment determination in the amount of \$32,593.09 for the period June 1, 2015 through March 30, 2019, because appellant received SSA age-related retirement benefits attributable to his federal service, without an appropriate offset, while he received FECA compensation benefits. It also determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), with supporting financial documentation, to determine a reasonable rate of recovery, and advised him that he could request waiver of recovery of the overpayment. It informed him that he could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment.

Appellant submitted an overpayment action request form, signed on May 13, 2019, in which he requested that OWCP render a final overpayment decision based on the written evidence of record. He further requested waiver of recovery of the overpayment. Appellant submitted an unsigned overpayment recovery questionnaire in which he listed \$8,246.00 in monthly income and \$8,575.00 in monthly expenses without explanation of these figures. He also submitted a number of financial documents, including SSA payment records, utility bills, mortgage statements, credit card bills, and bank statements. These documents revealed that appellant had \$9,185.00 in monthly income, comprised of FECA benefits and SSA benefits for himself and his wife. In a May 23, 2019 statement, he asserted that on May 29, 2018 he entered into a mortgage agreement with the lending institution to buy and move into a new house. Appellant claimed that he incurred monthly interest payments of approximately \$3,000.00 in detrimental reliance on the level of benefits he had been receiving for three years. He maintained that he would not have incurred the debt if he had known that the level of his benefits would not be stable. Appellant also asserted that SSA had been paying him an improper amount of compensation.

In an October 22, 2019 letter, OWCP acknowledged the receipt of financial documentation from appellant, but noted that he had minimally completed the provided Form OWCP-20 overpayment recovery questionnaire. It afforded him 30 days to provide additional information. No response was received.

By decision dated November 25, 2019, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$32,183.24, for the period June 1, 2015 through March 1, 2019, because he received SSA retirement benefits based on his age and attributable to his federal service, without an offset being made, while he received FECA compensation benefits.² It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery because his monthly income exceeded his monthly expenses by more than \$50.00. OWCP found that the financial documentation submitted by appellant revealed that he had \$9,185.00 in monthly income, comprised of \$5,902.00 in FECA benefits, \$2,344.00 in SSA benefits for himself, and \$939.50 in SSA benefits for his wife. The financial documents and other information showed that he had \$6,796.00 in monthly expenses, comprised of \$4,003.00 for mortgage/tax payment, \$535.00 for food, \$300.00 for gas/car expenses, and \$1,958.00 for other expenses (unreimbursed medical expenses, insurance, utilities, and household expenses). It required recovery of the overpayment by deducting \$2,000.00 from appellant's continuing compensation payments every 28 days.

² The period and amount of the overpayment were modified from the preliminary overpayment determination.

In a December 17, 2019 letter, appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review with regard to OWCP's overpayment determination.

By decision dated January 23, 2020, OWCP denied appellant's hearing request. It found that he was allowed 30 days from the May 6, 2019 preliminary overpayment determination to request a hearing before a representative of OWCP's Branch of Hearings and Review, but that he did not request such a hearing regarding the preliminary overpayment determination. OWCP advised that on November 25, 2019 it issued a final overpayment decision, and further noted, "The final decision concerning an overpayment is not subject to the hearing provision of 5 U.S.C. § 8124(b). It also noted that appellant could file an appeal with the Board.

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.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, he was also receiving SSA age-related retirement benefits that were attributable to his federal service without an appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ Consequently, fact of overpayment has been established.⁸

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

The Board further finds, however, that this case is not in posture for decision regarding the period(s) and amount of overpayment.

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 a dual benefits calculation form from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. Based upon this information, OWCP created a FERS offset overpayment calculation worksheet calculating a total overpayment amount.

The information provided by SSA on the dual benefits calculation form contains five periods in which corresponding SSA rates with and without FERS are compared. The form notes that beginning June 2015, the SSA rate with FERS was \$2,114.00 and without FERS was \$1,418.70; beginning December 2016 the SSA rate with FERS was \$2,120.30 and beginning December 2015 the SSA rate without FERS was \$1,418.70; beginning December 2017 the SSA rate with FERS was \$2,162.70 and beginning December 2016 the SSA rate without FERS was \$1,422.90; beginning April 2018 the SSA rate with FERS was \$2,162.70 and beginning December 2017 the SSA rate without FERS was \$1,451.30; and beginning December 2018 the SSA rate with FERS was \$2,223.20 and without FERS was \$1,491.90. As three of these five periods reflect incongruent dates, an accurate comparison cannot be made between the SSA age-related retirement benefit rates with and without FERS.

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall obtain clarification from SSA regarding appellant's exact age-related retirement benefit rates and their proper periods. It then shall determine the proper period(s) and amount of overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for him to provide updated supporting financial documentation. After this and other such further development as deemed necessary OWCP shall issue a *de novo* decision.⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because he concurrently received SSA age-related retirement benefits while also receiving FECA benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The January 23, 2020

⁹ In light of the Board's disposition regarding Issue 1, Issues 2, 3, and 4 are rendered moot.

decision of the Office of Workers' Compensation Programs is set aside as moot. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 16, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board