

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

D.M., Appellant	)	
	)	
and	)	Docket No. 21-0230
	)	Issued: December 14, 2021
DEPARTMENT OF AGRICULTURE, FOREST	)	
SERVICE, Radnor, PA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On November 24, 2020 appellant filed a timely appeal from a June 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 \$57,937.65 for the period January 1, 2015 through March 28, 2020 for which he was without fault, as he concurrently received FECA wage-loss

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<sup>1</sup> The Board notes that following the June 1, 2020 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 caserecord 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

compensation and Social Security Administration (SSA) age-related retirement benefits, without appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$521.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On July 22, 1998 appellant, then a 49-year-old firefighter and member of fire and aviation management staff, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress disorder (PTSD), major depression, and anxiety due to factors of his federal employment. On the reverse side of the claim form his supervisor indicated that he stopped work on March 17, 1998 and that his employment had been terminated. On February 19, 1999 OWCP accepted appellant's claim for PTSD and major depression. On July 11, 1998 he elected to receive FECA benefits in lieu of Office of Personnel Management (OPM) benefits. On April 26, 2000 the employing establishment indicated that appellant's retirement benefits were covered under the Federal Employees Retirement System (FERS).

On March 6, 2020 OWCP forwarded a FERS/SSA dual benefits worksheet to the SSA to determine whether an offset of compensation benefits was required.

On March 17, 2020 OWCP received a completed (FERS)/(SSA) dual benefits worksheet from SSA, which reported that appellant had been in receipt of SSA age-related retirement benefits since May 1998. The form listed her SSA age-related retirement benefit rates with FERS and without FERS as follows: beginning January 2015 appellant's monthly SSA rate with FERS was \$1,598.90 and without FERS was \$697.90; beginning December 2015 through November 2016 his monthly SSA rate with FERS was \$1,598.90 and without FERS was \$697.90; beginning December 2016 through November 2017 his monthly SSA rate with FERS was \$1,604.00 and without FERS was \$700.00; beginning December 2017 through November, 30, 2018 his monthly SSA rate with FERS was \$1,636.00 and without FERS was \$714.00; beginning December 2018 through November 2019 his monthly SSA rate with FERS was \$1,681.50 and without FERS was \$734.50; and beginning December 2019 appellant's monthly SSA rate with FERS was \$1,708.60 and without FERS was \$745.60.

In an April 15, 2020 letter, OWCP advised appellant that he had been receiving dual FERS and SSA age-related retirement benefits without an appropriate offset. It further informed him that his FECA wage-loss compensation benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service. OWCP explained that appellant's compensation payments would be offset by the portion of his SSA retirement benefits attributable to his federal service on account of age, resulting in a new net compensation payment of \$2,376.08, every 28 days.

On April 15, 2020 OWCP made a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$57,937.65 for which he was without fault, because his wage-loss compensation payments for the period January 1, 2015 through March 28, 2020 had not been reduced to offset his SSA age-related retirement benefits attributable to his federal service. It explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rates with and

without FERS for each period, and then multiplying that amount by the number of days in each period. OWCP found that appellant was without fault in the creation of the overpayment. It requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a reasonable repayment schedule and advised that he could request waiver of recovery. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided an overpayment action request form and notified him that within 30 days of the date of the letter, he could request a final decision based on the written record, or a prerecoupment hearing.

OWCP completed a FERS offset overpayment calculation worksheet on April 15, 2020. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period from January 1, 2015 through March 28, 2020, resulted in a total overpayment of \$57,937.65. OWCP determined that: from January 1 through November 30, 2015, appellant received an overpayment in the amount of \$9,920.90; from December 1, 2015 through November 30, 2016, he received an overpayment in the amount of \$10,871.41; from December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$10,877.80; from December 1, 2017 through November 30, 2018, he received an overpayment in the amount of \$11,094.40; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$11,395.22; and from December 1, 2019 through March 28, 2020, he received an overpayment in the amount of \$3,777.92.

In an overpayment action request form dated May 12, 2020, appellant requested that OWCP make a decision based on the written evidence and requested waiver of recovery because he was without fault in the creation of the overpayment. He submitted a May 7, 2020 Form OWCP-20 listing his monthly income of \$3,649.84 including \$1,564.00 in SSA benefits, and \$2,085.84 in FECA benefits. Appellant listed his monthly expenses of housing \$800.00, food \$600.00, clothing \$400.00, utilities \$500.00, and miscellaneous expenses of \$2,000.00 for total monthly expenses of \$4,300.00. He listed assets of \$99,116.00 with cash \$100.00, checking account \$2,081.00, and savings account of \$96,935.00. Appellant also noted that he had a Thrift Savings Plan account.

By decision dated June 1, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$57,937.65 for the period January 1, 2015 through March 28, 2020. It determined that he was without fault in the creation of the overpayment. OWCP denied waiver of recovery of the overpayment, noting that appellant provided no financial documentation to support his reported monthly expenses. It required recovery of the overpayment by deducting \$521.00 every 28 days from his continuing compensation payments.

### **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.<sup>3</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>4</sup>

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 benefits that are attributable to the employee's federal service.<sup>5</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>6</sup>

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

The Board finds that appellant received a \$57,937.65 overpayment of compensation for the period January 1, 2015 through March 28, 2020 for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset.

A claimant cannot receive both FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2015 through March 28, 2020. The Board, thus, finds that fact of overpayment is established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided their rate with FERS, and without FERS for specific periods commencing January 1, 2015 through March 28, 2020. OWCP provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its April 15, 2020 preliminary overpayment determination.

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

<sup>7</sup> 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2015 through March 28, 2020 and finds that an overpayment of compensation in the amount of \$57,937.65 was created.<sup>8</sup>

### **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>9</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>10</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary 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>11</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>12</sup>

Additionally, 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.<sup>13</sup>

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

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<sup>8</sup> *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>9</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>10</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

<sup>12</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

<sup>13</sup> 20 C.F.R. § 10.437(a)(b).

determine the repayment schedule, if necessary.<sup>14</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>15</sup>

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

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

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>16</sup>

While appellant submitted a completed Form OWCP-20 dated August 6, 2020, he failed to furnish any financial documentation to support his income and expenses. OWCP found that he did not provide the requested information regarding income, expenses, debts, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. It found that absent complete documentation of appellant's expenses and assets the evidence was insufficient to establish that recovery of the overpayment would defeat the purposes of FECA or be against equity and good conscience.<sup>17</sup>

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in requiring recovery of the overpayment.

Appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds, therefore, that OWCP properly denied waiver of recovery.<sup>18</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

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<sup>14</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>15</sup> *Id.* at § 10.438(b).

<sup>16</sup> 20 C.F.R. § 10.436.

<sup>17</sup> *J.W.*, Docket No. 20-0857 (issued March 24, 2021).

<sup>18</sup> *Supra* note 17.

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>19</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$521.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with the April 15, 2020 preliminary overpayment determination. Appellant completed Form OWCP-20, but did not provide the necessary financial documentation to support his income and expenses prior to the June 1, 2020 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>20</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>21</sup>

OWCP gave due regard to the information submitted, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship. Therefore, it properly required recovery of the overpayment by deducting \$144.14 every 28 days from appellant's continuing compensation payments.<sup>22</sup>

The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$521.00 every 28 days.

### **CONCLUSION**

The Board finds appellant received a \$57,937.65 overpayment of compensation for the period January 1, 2015 through March 28, 2020, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$521.00 from his continuing compensation payments every 28 days.

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<sup>19</sup> 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 9; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>20</sup> 20 C.F.R. § 10.438. *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>21</sup> *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

<sup>22</sup> *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board