

compensation benefits 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 \$640.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on a separate issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 30, 1987 appellant, then a 41-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained anxiety causally related to factors of his federal employment.⁴ He stopped work on March 12, 1987. OWCP accepted the claim for an adjustment reaction and post-traumatic stress disorder. It paid appellant compensation for total disability from March 14 through September 20, 1987. Appellant returned to limited-duty work on September 21, 1987, but stopped work again on November 9, 1987 and did not return. OWCP paid him wage-loss compensation for total disability on the periodic rolls.

On October 28, 2015 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA for completion. In an October 28, 2015 response, SSA provided the monthly payments that appellant was entitled to with and without FERS effective October 2011 to December 2015. It advised that he had become entitled to retirement benefits on October 2011.

In a March 29, 2016 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to his federal service from his compensation benefits. It noted that the SSA offset amount was currently \$264.60 or \$244.25 when adjusted to a 28-day payment cycle. OWCP found that appellant was entitled to a net compensation after the SSA offset of \$2,367.75.

On April 4, 2016 appellant contended that he was not covered by the FERS retirement program.

In a letter dated May 17, 2016, OWCP advised appellant that SSA had indicated that he received benefits due to his federal service as part of the FERS retirement program. It requested that he forward a Standard Form (SF)-50 regarding his employment status.

Thereafter, OWCP received a February 6, 1984 notification of personnel action, PS Form-50, which indicated that appellant's retirement coverage was the Civil Service Retirement System (CSRS) and Federal Insurance Contributions Act (FICA). A January 7, 1987 PS-50 indicated that his retirement coverage had been automatically transferred to the FERS effective January 1, 1987. An August 11, 1992 PS-50 noted that appellant had retired on disability with a

³ Docket No. 00-1000 (issued November 13, 2001).

⁴ The Form CA-2 is not contained in the case record.

last day in pay status of November 9, 1987. The form indicated that he was covered under the FERS retirement plan.

On December 10, 2020 OWCP again sent SSA a FERS/SSA dual benefits calculation form.

In a December 28, 2020 response, SSA provided the same figures as it had on October 28, 2015. It notified OWCP that, with FERS, appellant was entitled to a monthly payment of \$1,103.00 effective October 2011, \$1,142.70 effective December 2011, \$1,162.10, effective December 2012, \$1,179.50, effective December 2013, and \$1,199.50 effective December 2014 and 2015. Without his federal service contributions, appellant was entitled to a monthly payment rate of \$859.80 effective October 2011, \$890.70 effective December 2011, \$905.80 effective December 2012, \$919.30 effective December 2013, and \$934.90 effective December 2014 and 2015.

In a January 20, 2021 FERS offset calculation memorandum, OWCP calculated appellant's FERS/SSA offset for each period October 1, 2011 through March 5, 2016 and the amount of the overpayment for each period. It found that, from October 1 through November 30, 2011, he received an overpayment in the amount of \$489.07, from December 1, 2011 through November 30, 2012, he received an overpayment in the amount of \$3,040.62, from December 1, 2012 through November 30, 2013, he received an overpayment in the amount of \$3,084.05, from December 1, 2013 through November 30, 2014, he received an overpayment in the amount of \$3,130.98, from December 1, 2014 through November 30, 2015, he received an overpayment in the amount of \$3,183.92, and from December 1, 2015 through March 5, 2016, he received an overpayment in the amount of \$837.42. OWCP added the amounts to find a total overpayment of \$13,766.05.

On January 25, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$13,766.05 had been created because appellant received wage-loss compensation payments for the period October 1, 2011 through March 5, 2016 that had not been reduced to offset his SSA age-related retirement benefits attributable to his federal service. It 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) to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In an overpayment action request form signed January 28, 2021, appellant requested a decision based on the written evidence. He requested waiver of recovery of the overpayment. In an OWCP-20 form, appellant advised that he had monthly income of \$3,720.00 and listed monthly expenses of \$1,820.00. He indicated that he had assets of \$8,200.00. Appellant did not submit the requested financial documentation.

By decision dated March 15, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received a \$13,766.05 overpayment of compensation for the period October 1, 2011 through March 5, 2016 because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as his monthly income exceeded his expenses by more than the allotted amount. OWCP also noted that appellant had not submitted any documentation supporting his monthly expenses. It required recovery of the overpayment by deducting \$640.00 from his continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,766.05 for the period October 1, 2011 through March 5, 2016, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset.

Appellant received SSA age-related retirement benefits beginning October 2011. OWCP paid him wage-loss compensation for total disability on the periodic rolls after he stopped work on November 9, 1987. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.¹⁰ The

⁵ *Supra* note 1.

⁶ 5 U.S.C. § 8102.

⁷ *Id.* at § 8116.

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

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ *Supra* note 8. *See F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service. Accordingly, the Board finds that fact of overpayment has been established.¹¹

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits 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 the SSA rates with FERS and without FERS for specific periods October 1, 2011 through December 2015. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$13,817.35. The Board has reviewed OWCP's calculation of dual benefits received by him for the period October 1, 2011 through March 5, 2016 and finds that an overpayment of compensation in the amount of \$13,766.05 was created.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment must be recovered 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.¹³

Recovery of an overpayment will defeat the purpose of FECA when 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.¹⁴ 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 \$50.00.¹⁵ 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.¹⁶ 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.¹⁷

¹¹ See *L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹² See *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹³ 5 U.S.C. § 8129.

¹⁴ 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(2), (3) (September 2020).

¹⁵ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁶ See *supra* note 14 at Chapter 6.400.4(a)(2) (September 2020).

¹⁷ *Id.* at Chapter 6.400.4(b)(3)

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.¹⁸

ANALYSIS -- ISSUE 2

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

As OWCP found appellant not at fault in the creation of the overpayment, waiver 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.¹⁹

OWCP found that appellant's monthly income of \$3,720.00 exceeded his listed monthly expenses of \$1,820.00 by more than the allotted amount. As his monthly income exceeds his ordinary and necessary living expenses by more than \$50.00, the Board finds that appellant does not need substantially all of his income for ordinary and necessary living expenses.²⁰

Appellant has not established that denying waiver of recovery of the overpayment would defeat the purpose of FECA.²¹ There is also no evidence to support that he gave up a valuable right or changed his position for the worse, in reliance on his FECA compensation. Appellant, therefore, did not establish that recovery of the overpayment was against equity and good conscience.²²

As 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 that OWCP did not abuse its discretion in denying waiver of recovery.²³

On appeal appellant alleged that OWCP had taken multiple deductions based on his SSA payments and that he was experiencing financial hardship. As discussed, however, he has not submitted any evidence supporting that waiver of record would defeat the purpose of FECA or be against equity and good conscience.

¹⁸ 20 C.F.R. § 10.437(a)(b).

¹⁹ *Id.* at § 10.436.

²⁰ *See M.R.*, Docket No. 20-1622 (issued June 30, 2021).

²¹ *See R.D.*, Docket No. 19-1598 (issued April 17, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020).

²² *Id.*

²³ *Id.*

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.²⁴

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 hardship.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$640.00 from appellant's continuing compensation every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$640.00 from appellant's compensation payments every 28 days, OWCP gave due regard to the financial information provided, noting that his monthly income exceeded his monthly expenses by \$1,900.00. Therefore, OWCP properly required recovery of the overpayment by deducting \$640.00 from his continuing compensation every 28 days.²⁶

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$13,766.05 for the period October 1, 2011 through March 5, 2016, 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 \$640.00 every 28 days from his continuing compensation payments.

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

²⁵ *Id.*

²⁶ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2021
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