



he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits for the period February 6 through May 25, 2019 without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On December 21, 2018 appellant, then a 77-year-old customs border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2018 he injured his lower back and buttocks when he slipped on steps while in the performance of duty. His retirement coverage was noted as federal employee retirement system (FERS). OWCP accepted the claim for spondylosis without myelopathy or radiculopathy, lumbar region; and unspecified fracture of unspecified lumbar vertebra closed fracture. It paid appellant wage-loss compensation on the supplemental rolls effective February 6, 2019 and on the periodic compensation rolls effective March 31 through August 17, 2019.

On March 28, 2019 OWCP requested information from SSA regarding appellant's dual FERS/SSA benefits.

On April 22, 2019 OWCP received a completed FERS/SSA dual benefits calculation form from SSA dated April 17, 2019, wherein SSA indicated that appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$2,675.60 and SSA rate without FERS was \$1,716.60 effective February 1, 2019. On May 26, 2019 OWCP adjusted appellant's compensation based on the FERS offset.

On June 3, 2019 OWCP completed a FERS offset calculation form. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$3,604.15 for the period February 1 through May 25, 2019.

A June 6, 2019 FERS offset calculation form indicated that during the 109 days from February 6 to May 25, 2019 appellant received an overpayment in the amount of \$3,446.08. In a June 6, 2019 manual adjustment form, OWCP determined that for the period February 6 through May 25, 2019, appellant received an overpayment due to FERS offset of \$3,446.08.

On July 24, 2019 OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$3,446.08 for the period February 6 through May 25, 2019 as he had received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset, and that this portion of his SSA benefit was a prohibited dual benefit. It included copies of the FERS offset calculation form for the period February 6 through May 25, 2019 and its manual adjustment form both dated June 6, 2019 setting forth the claimed basis of the overpayment. OWCP also informed appellant of its preliminary determination that he was without fault in the creation of the overpayment. It provided him with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). OWCP 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.

On August 22, 2019 OWCP received appellant's August 12, 2019 request for waiver of recovery of the overpayment and an August 12, 2019 completed Form OWCP-20. Appellant alleged that having to repay the overpayment would create a financial hardship on him and his family. Copies of financial documents including 1040 tax forms for the years 2016, 2017, 2018, electric bills, car payments, credit card bills, a mortgage statement, and earning and leave statements were submitted.

By decision dated August 26, 2019, OWCP finalized the overpayment determination, finding that appellant received an overpayment of wage-loss compensation in the amount of \$3,446.08 from February 6 through May 25, 2019 because it had failed to deduct SSA age-related retirement benefits from his compensation for that period. It also affirmed the finding that he was without fault in the creation of the overpayment as, due to the complexity in benefits administration, he could not have reasonably known that an improper payment occurred. OWCP required that appellant forward the entire amount as repayment, summarily concluding that there was no evidence of record to substantiate waiver of recovery of the overpayment.

### **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 retirement 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 age-related retirement 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 an overpayment of compensation in the amount of \$3,446.08 because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period February 6 through May 25, 2019 without an appropriate offset.

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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); *see J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019).

<sup>6</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also S.M.*, Docket No. 20-0152 (issued August 10, 2020).

The record indicates that, while appellant was receiving wage-loss compensation under FECA, he also received SSA age-related retirement benefits attributable to his federal service during the relevant period. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> Consequently, the fact of the overpayment has been established.

To determine the amount of the overpayment, the portion of 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. The SSA provided the SSA rate with FERS and without FERS for the period February 1 through May 25, 2019. OWCP provided its calculations of the amount that should have been offset during the relevant period based on information provided by SSA for the period February 6 through May 25, 2019 in its July 24, 2019 preliminary overpayment determination. No contrary evidence was received.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 6 through May 25, 2019 and finds that an overpayment of compensation in the amount of \$3,446.08 was created.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in 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.<sup>9</sup> 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 of 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.<sup>10</sup>

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.<sup>11</sup> 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 income (including compensation benefits) to meet current ordinary and necessary living expense, and, also, if the beneficiary's assets do not exceed a specified amount

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<sup>7</sup> See *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *D.M.*, Docket No. 19-1369 (issued June 30, 2020).

<sup>8</sup> See *N.B.*, *id.*; *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.

<sup>10</sup> 20 C.F.R. § 10.438.

<sup>11</sup> *Id.* at §§ 10.434-10.437.

as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>12</sup> For waiver of recovery of the overpayment under 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.<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>

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

The Board finds that this case is not in posture for decision as to whether recovery of the overpayment should be waived.

In the case of *William A. Couch*,<sup>15</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its August 26, 2019 decision, OWCP denied waiver of recovery finding that there was no evidence to substantiate waiver. However, the record reflects that on August 22, 2019 it received appellant's request for waiver of the overpayment and a completed Form OWCP-20. Notably, appellant documented his income, expenses, and assets as specified by OWCP on his Form OWCP-20 and submitted financial information. He also alleged that having to repay the overpayment would create a financial hardship for himself and his family. OWCP failed to review the information submitted by appellant in support of his request for waiver of recovery of the overpayment, therefore, failing to follow its procedures by properly discussing all of the relevant evidence of record received prior to issuing the final overpayment decision on August 26, 2019.<sup>16</sup>

On remand OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

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<sup>12</sup> *Id.* at § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that 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. *Id.* at Chapter 6.400.4a(2).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>16</sup> All evidence submitted should be reviewed and discussed in the decision. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012); *see P.H., (K.H.)*, Docket No. 19-1130 (issued November 19, 2020); *M.R.*, Docket No. 19-1626 (issued August 19, 2020).

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$3,446.08 because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period February 6 through May 25, 2019 without an appropriate offset. The Board further finds that this case is not in posture for decision regarding the issue of waiver of recovery of the \$3,446.08 overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part, and the case is remanded for further action consistent with this decision of the Board.

Issued: February 22, 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