

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

A.S., Appellant	)	
	)	
and	)	<b>Docket No. 20-1314</b>
	)	<b>Issued: February 23, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
City of Industry, CA, Employer	)	
	)	

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

*Case Submitted on the Record<sup>1</sup>*

**DECISION AND ORDER**

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

**JURISDICTION**

On June 22, 2020 appellant filed a timely appeal from a June 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees'

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because he sought to highlight the importance of his case and address why he is not responsible for the overpayment. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,078.63 for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits for the period July 29 through December 7, 2019 without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On November 17, 2018 appellant, then a 66-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed numbness, tingling, and pain in both hands, fingers, and arms due to factors of his federal employment. He noted that he first became aware of his condition and realized it was causally related to his federal employment on September 16, 2018. Appellant did not immediately stop work.

On February 4, 2019 OWCP accepted the claim for bilateral carpal tunnel syndrome, trigger finger -- left index finger, and trigger finger -- left middle finger. It paid appellant wage-loss compensation on the supplemental rolls from July 29 through August 17, 2019 and January 5 to 17, 2020, and on the periodic rolls from August 18, 2019 through January 4, 2020.

On August 12, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for temporary total disability for the period July 29 through August 12, 2019. He indicated on the Form CA-7 that he was receiving SSA retirement benefits. On page two of the claim form P.W., an employing establishment human resources specialist, acknowledged that appellant was temporarily totally disabled from work from July 29 through November 16, 2019.

On August 22, 2019 OWCP requested information from SSA regarding appellant's dual benefits.

On September 13, 2019 OWCP received a completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form from SSA. SSA calculated SSA age-related benefit rates with FERS offset and without a FERS offset for periods including January 1 through December 7, 2019. Beginning January 1, 2019, SSA rate with FERS was \$2,012.60 and without FERS was \$385.90.

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

<sup>3</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 case record 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.*

OWCP prepared a FERS offset calculation worksheet on December 13, 2019, wherein it noted the calculation of appellant's SSA offset overpayment from July 29 through December 7, 2019. The total overpayment was determined to be \$7,078.63.

On December 13, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$7,078.83 had been created because appellant received SSA age-related retirement benefits from July 29 through December 7, 2019 that were partially based on credits earned while working in the Federal Government, and that this portion of his SSA benefit was a prohibited dual benefit. 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 to support income and expenses. Additionally, OWCP further notified him 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 January 2, 2020 appellant completed an overpayment action request form and requested waiver. He indicated that he was requesting waiver of recovery of overpayment because OWCP was aware that he was receiving SSA benefits and OWCP had advised him that, since he was over age 66, his benefits would not be affected.<sup>4</sup>

In a January 23, 2020 letter, appellant elected Office of Personnel Management (OPM) retirement benefits in lieu of FECA benefits because he did not want to be subjected to the SSA/FERS offset. In a compensation termination sheet dated January 28, 2020, OWCP noted that appellant's FECA benefits were discontinued.

In an April 3, 2020 notice, OWCP's hearing representative informed appellant that an telephonic hearing was scheduled for May 12, 2020 at 11:30 a.m. Eastern Standard Time (EST). OWCP instructed him to call the toll-free number listed below and when prompted, enter the pass code also listed below. It mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement of the hearing was made.

By decision dated June 1, 2020, OWCP found that, as appellant had not appeared for the scheduled telephonic hearing, it had finalized the overpayment determination. It found that appellant had received an overpayment of compensation in the amount of \$7,078.63<sup>5</sup> for the period July 29 through December 7, 2019 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. OWCP further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because appellant had not completed the Form OWCP-20

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<sup>4</sup> The completed overpayment action request form requested waiver of recovery, but did not indicate whether appellant was seeking a telephone conference, a final decision based on the written evidence, or a precoupment hearing. The form was mailed to OWCP's Branch of Hearings and Review.

<sup>5</sup> The December 13, 2019 preliminary overpayment determination found an overpayment of compensation in the amount of \$7,078.83.

and failed to 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 required the overpayment be due and payable in full.

### **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>6</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>7</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>8</sup> 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 age-related retirement benefits 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>9</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,078.63, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period July 29 through December 7, 2019, without an appropriate offset.

The evidence of record supports that appellant received FECA wage-loss compensation for total disability beginning on July 29, 2019, and that he received SSA age-related retirement benefits beginning July 2019. As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>10</sup> The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service from July 29 through December 7, 2019. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.<sup>11</sup>

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<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8116.

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

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

<sup>10</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007); *see also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>11</sup> *Id.*

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 documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for the period July 29 through December 7, 2019. OWCP provided its calculations for the relevant period based on SSA's worksheet and determined that he received an overpayment in the amount of \$7,078.63. The Board, thus, finds that appellant received prohibited dual benefits for the period July 29 through December 7, 2019 totaling \$7,078.63.<sup>12</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>13</sup> Section 10.438 of 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 determine the repayment schedule, if necessary.<sup>14</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>15</sup> However, appellant had the responsibility to provide financial information to OWCP,<sup>16</sup> but failed to do so.

In its preliminary determination, dated December 13, 2019, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not provide the requested Form OWCP-20 or submit any financial information necessary for

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<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8129.

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

<sup>15</sup> *Id.* at § 10.436.

<sup>16</sup> *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant asserts that he disagrees with the overpayment determination and notes that he had previously provided financial information. He further asserts that he should be compensated for his wage loss because his injury was work related. As noted above, however, appellant received concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to his federal service for the same period,<sup>17</sup> which is a prohibited dual benefit and constitutes an overpayment.<sup>18</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,078.63, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period July 29 through December 7, 2019 without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>17</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007); *see also N.B.*, *supra* note 9; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>18</sup> With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *L.L.*, Docket No. 19-0097 (issued March 20, 2020); *A.B.*, Docket No. 18-0915 (issued October 24, 2018). As appellant was not in receipt of continuing wage-loss compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See id.*; *Miguel A. Muniz*, 54 ECAB 217 (2002); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

**ORDER**

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

Issued: February 23, 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