

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

_____)	
T.R., Appellant)	
)	
and)	Docket No. 22-1144
)	Issued: May 5, 2023
U.S. POSTAL SERVICE, AVENT FERRY)	
STATION POST OFFICE, Raleigh, NC,)	
Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 28, 2022 appellant, through counsel, filed a timely appeal from a July 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,006.21 during the period December 1, 2019 through December 4, 2021, for which he was without fault, as he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation 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 \$581.91 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 18, 2012 appellant, then a 58-year-old letter city carrier, filed an occupational disease claim (Form CA-2) alleging that he first realized the connection between his torn right knee meniscus and torn quadricep and factors of his federal employment on July 24, 2012. His retirement coverage was noted as Federal Employees Retirement System (FERS). OWCP accepted the claim for right quadriceps tendon rupture and right medial meniscus posterior horn derangement, and subsequently expanded acceptance of the claim to include right lower leg traumatic arthropathy, right knee osteoarthritis, and left knee meniscus tear. It paid appellant wage-loss compensation on the supplemental rolls, effective October 20, 2012, and on the periodic rolls effective August 23, 2015.

On October 8, 2021 OWCP forwarded a FERS/SSA dual benefits form to SSA requesting information from SSA regarding appellant's potential receipt of dual benefits.

OWCP received a completed FERS/SSA dual benefits form from SSA dated November 8, 2021, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that the SSA rate with FERS was \$2,312.90 effective December 2019, and \$2,342.90 effective December 2020. The form further indicated that the SSA rate without FERS was \$1,451.60 effective December 2019 and \$1,470.40 effective December 2020.

On December 17, 2021 OWCP advised appellant that it was reducing his wage-loss compensation effective December 5, 2021 by the amount of his SSA benefits attributable to his federal service. It indicated that his new net compensation every 28 days would be \$2,2287.63.

In a FERS offset overpayment calculation form completed on December 20, 2021, OWCP calculated the amount that it should have offset from appellant's compensation for each period December 1, 2019 through December 4, 2021. It found that, from December 1, 2019 through November 30, 2020, he received an overpayment of \$10,392.39, and from December 1, 2020 through December 4, 2021, he received an overpayment of \$10,613.82. Based on these figures, OWCP calculated the total overpayment amount of \$21,006.21.

In a preliminary overpayment determination dated January 26, 2022, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$21,006.21 for the period December 1, 2019 through December 4, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation

without an appropriate offset. It further advised him of its preliminary determination 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 supporting 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 final decision based on the written evidence, or a prerecoupment hearing.

On February 2, 2022 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He also noted his disagreement that there was an overpayment and with the amount of the overpayment, and requested waiver because he had been found without fault in the creation of the overpayment. No completed Form OWCP-20 or supporting financial documentation was received.

A prerecoupment hearing was held on May 10, 2022, during which appellant was represented by counsel. OWCP's hearing representative advised that no financial information had been provided. She explained the importance of completing the Form OWCP-20 and submitting supporting financial information. OWCP's hearing representative afforded appellant 30 days to submit a completed OWCP-20 form and supporting financial information. No completed Form OWCP-20 or supporting financial documentation was received.

By decision dated July 19, 2022, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$21,006.21 for the period December 1, 2019 through December 4, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. She found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as he had not provided a completed OWCP-20 form and necessary financial information. The hearing representative required repayment of the overpayment by deducting \$581.92.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of 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 the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8116.

federal service of the employee.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 has established that appellant received an overpayment of compensation in the amount of \$21,006.21 for the period December 1, 2019 through December 4, 2021, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset.

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age related benefits attributable to federal service for the same period.⁷ The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period December 1, 2019 through December 4, 2021. Consequently, the fact of overpayment has been established.⁸

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 the specific amounts of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS during the specific period December 1, 2019 through December 2020. In the July 19, 2022 final decision, OWCP's hearing representative provided her calculations for each relevant period based on SSA's worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period December 1, 2019 through December 4, 2021 and finds that an overpayment of compensation in the amount of \$21,006.21 has been established. OWCP obtained documentation from SSA establishing that his SSA rate with FERS was \$2,312.90 effective December 1, 2019 and \$2,342.90 effective December 1, 2020. The form further indicated that the SSA rate without FERS was \$1,451.60 effective December 2019 and \$1,470.40 effective December 2020. Therefore, appellant received an overpayment of FECA compensation in the amount of \$21,006.21 during the period December 1, 2019 through December 4, 2021.

⁵ 20 C.F.R. § 10.421(d); *see T.T.*, Docket No. 20-1257 (issued July 29, 2022); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

⁷ *T.T., id.; D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B., id.*

⁸ *See J.S.*, Docket No. 22-0369 (issued June 7, 2022); *L.B.*, Docket No. 19-1322 (issued January 27, 2020).

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.⁹

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.¹⁰

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.¹¹ 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.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

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

⁹ 5 U.S.C. 8129; 20 C.F.R. §§ 10.433, 10.436, and 10.437; *see T.T., supra* note 5; *M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹⁰ *J.S., supra* note 8; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see T.T., id.*; *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ 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 6.400.4a.(2) (September 2020).

¹² *Id.* at § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *T.T., supra* note 5; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁴ *Id.* at § 10.438(b).

As OWCP found appellant without 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.¹⁵

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because he did not provide a completed OWCP 20 form or any necessary supporting financial information.

In its preliminary overpayment determination dated January 26, 2022, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses, and assets. OWCP's hearing representative also explained the importance of this information at the May 10, 2022 hearing and held the record open for 30 days. Appellant did not submit a completed the OWCP-20 form or any financial documentation supporting his income, expenses, or assets. As he did not submit the financial documentation required under section 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁶

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.¹⁷

Section 10.441(a) of OWCP's regulations¹⁸ provides in pertinent part:

“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 soon as the error is discovered or his or her attention is called to 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 any hardship.”¹⁹

¹⁵ *Id.* at § 10.436.

¹⁶ *J.S.*, *supra* note 8; *D.C.*, Docket No. 19-0118 (issued January 15, 2020); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁷ 20 C.F.R. § 10.441; *see T.T.*, *supra* note 5; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

¹⁸ *Id.* at § 10.441(a).

¹⁹ *Id.*; *see T.T.*, *supra* note 5; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$581.91 from appellant's continuing compensation payments every 28 days.

While appellant requested waiver of recovery of the overpayment, he did not complete the OWCP-20 form or otherwise provide financial documentation. OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as provided by OWCP.²⁰

When an individual fails to provide requested information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ OWCP's procedures provide that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²²

The record reflects that appellant's continuing 28-day wage-loss compensation as of May 22, 2022 was \$2,327.64. Therefore, deducting \$581.91 every 28 days from his continuing compensation does not exceed the 25 percent repayment rate.²³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation during the period December 1, 2019 through December 4, 2021, in the amount of \$21,006.21, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of the recovery of the overpayment, and properly required recovery of the overpayment by deducting \$581.91 from appellant's continuing compensation payments every 28 days.

²⁰ *Id.* at § 10.438. See also *J.S.*, *supra* note 8; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

²¹ See *J.S.*, *id.*; *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²² *Supra* note 11 at Chapter 6.500.8(c)(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020).

²³ See *S.M.*, Docket No. 21-0772 (issued November 30, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board