

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

P.S., Appellant	)	
	)	
and	)	<b>Docket No. 22-1268</b>
	)	<b>Issued: May 15, 2023</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS AND BORDER PROTECTION, U.S.</b>	)	
<b>BORDER PATROL, Weslaco, TX, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 8, 2022 appellant filed a timely appeal from a June 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</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 \$36,817.95 during the period September 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, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$1,175.94 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On June 24, 2002 appellant, then a 48-year-old supervisory border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained neck, lower back, left leg, left arm, and left shoulder injuries when his vehicle was involved in a collision in the performance of duty. OWCP accepted the claim for cervical and lumbar strains. It subsequently expanded acceptance of the claim to include cervical and lumbar radiculopathy, cervical intervertebral disc degeneration and lumbar intervertebral disc displacement without myelopathy. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing August 9, 2002 and on the periodic rolls commencing August 11, 2002.

A claim for compensation (Form CA-7) dated August 6, 2002 indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

On November 10, 2021 OWCP provided SSA with a FERS/SSA dual benefits form.

On November 29, 2021 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from September 2019 through December 2021. Beginning September 2019, the SSA rate with FERS was \$2,442.10 and without FERS was \$1,117.10. Beginning December 2019, the SSA rate with FERS was \$2,481.10 and without FERS was \$1,134.90. Beginning December 2020, the SSA rate with FERS was \$2,513.30 and without FERS was \$1,149.60. Beginning December 2021, the SSA rate with FERS was \$2,661.50 and without FERS was \$1,217.40.

On December 27, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it indicated that, for the period September 1 through November 30, 2019, appellant received an overpayment in the amount of \$3,975.00; for the period December 1, 2019 through November 30, 2020 appellant received an overpayment in the amount of \$16,243.16; for the period December 1, 2020 through November 30, 2021 appellant received an overpayment in the amount of \$16,409.36; and for the period December 1 through 4, 2021 appellant received an overpayment in the amount of \$190.43. OWCP found that he had therefore received a total overpayment of compensation in the amount of \$36,817.95 for the period September 1, 2019 through December 4, 2021.

On December 28, 2021 OWCP issued a preliminary overpayment determination, finding an overpayment of compensation in the amount of \$36,817.95 had been created for the period September 1, 2019 through December 4, 2021 because appellant concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It indicated 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 repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support her reported income and expenses. Additionally, OWCP further 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 evidence or a precoupment hearing.

In an overpayment action request form dated January 8, 2022 and received on February 9, 2022, appellant requested waiver because he had been found without fault in the creation of the overpayment and repaying the overpayment would cause hardship. Enclosed was a Form OWCP-20 in which appellant indicated total monthly income of \$11,703.00, and monthly expenses totaling \$8,874.00. Appellant also noted that he had assets totaling \$10,060.00. No supporting financial documentation was submitted.

By decision dated February 9, 2022, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$36,818.01 for the period September 1, 2019 through December 4, 2021 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as it had not received supporting documentation or a written response. OWCP required recovery of the overpayment by withholding \$1,175.94, which was 25 percent of his 28-day net compensation amount, from appellant's continuing compensation payments every 28 days.

A memorandum of telephone call (Form CA-110) dated February 18, 2022 indicated that appellant was advised by OWCP that since he had requested waiver of recovery of the overpayment, a precoupment hearing should have been initiated.

By decision dated March 10, 2022, OWCP vacated the decision dated February 9, 2022 as appellant had requested a precoupment hearing.

A telephonic hearing before a representative of OWCP's Branch of Hearings and Review was held on May 3, 2022. Appellant testified regarding his monthly income and expenses.

By decision dated June 24, 2022, OWCP's hearing representative found that appellant had received an overpayment of compensation in the amount of \$36,817.95 for the period September 1, 2019 through December 4, 2021 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as he failed to provide supporting financial information in support of his monthly income and expenses. OWCP required recovery of the overpayment at 25 percent of his 28-day net compensation amount, by withholding \$1,175.94, from appellant's continuing compensation payments every 28 days.

### **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.<sup>2</sup> Section 8116 limits the right of an employee to receive compensation. While an employee

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<sup>2</sup> *Id.* at § 8102(a).

is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>3</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.<sup>4</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 age-related retirement 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>5</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$36,817.95 for the period September 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, without an appropriate offset.

As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>6</sup> The information provided by SSA on November 29, 2021 reflected that appellant had received SSA age-related retirement benefits that were attributable to his own federal service from September 1, 2019 through December 4, 2021. Thus, the record establishes that appellant received an overpayment of FECA wage-loss compensation.<sup>7</sup>

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 appellant's SSA age-related retirement benefits that were attributable to his federal service. SSA provided its benefit rates with FERS and without FERS. The Board finds that OWCP properly determined the amount of the overpayment. The Board found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. OWCP provided its calculations for each relevant time period based on the SSA dual benefits form and properly calculated that the lack of offset from September 1, 2019 through December 4, 2021 resulted in an overpayment total of \$36,817.95.

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<sup>3</sup> *Id.* at § 8116.

<sup>4</sup> 20 C.F.R. § 10.421(d); *see P.A.*, Docket No. 22-0801 (issued October 28, 2022); *S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>5</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>6</sup> *Supra* note 5. *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>7</sup> *Id.*

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$36,817.95 for the period September 1, 2019 through December 4, 2021.

### **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>8</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>9</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>10</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>11</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>12</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 determine the repayment schedule, if necessary.<sup>13</sup> Failure to submit the requested information

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<sup>8</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *P.A.*, *supra* note 4; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>9</sup> *P.A.*, *id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>10</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 6.400.4a(2) (September 2020).

<sup>11</sup> *P.A.*, *supra* note 4; *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>12</sup> 20 C.F.R. § 10.437(a)-(b).

<sup>13</sup> *Id.* at § 10.438(a); *P.A.*, *supra* note 4; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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>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 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> Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.<sup>16</sup>

In its preliminary overpayment determination dated December 28, 2021, OWCP requested a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. OWCP advised that failure to submit the requested information would result in the denial of waiver. However, while appellant returned the Form OWCP-20 containing information about his income and expenses, he did not submit the required documentation such that OWCP would have the supporting documentation necessary for it to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>17</sup>

### **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.<sup>18</sup> Section 10.441(a) of OWCP's implementing regulations<sup>19</sup> provides that, if 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

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<sup>14</sup> *Id.* at § 10.438(b).

<sup>15</sup> *Id.* at § 10.436.

<sup>16</sup> *Id.*

<sup>17</sup> *See P.A., supra* note 4; *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

<sup>18</sup> *See P.A., id.*; *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>19</sup> 20 C.F.R. § 10.441(a).

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.<sup>20</sup>

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines.<sup>21</sup> The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>22</sup>

### ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,175.94 from appellant's continuing compensation payments every 28 days.

Along with the December 28, 2021 preliminary overpayment determination, OWCP requested that appellant complete a Form OWCP-20 and submit supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>23</sup> When an individual fails to provide sufficient financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>24</sup> As appellant did not submit any supporting documentation, the Board finds that OWCP properly required recovery of the \$36,817.95 overpayment at the 25 percent rate of \$1,175.94 from appellant's continuing compensation payments every 28 days.<sup>25</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$36,817.95, for the period September 1, 2019 through December 4, 2021, for which he was without fault, as 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 recovery of the overpayment. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$1,175.94 from appellant's continuing compensation payments every 28 days.

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<sup>20</sup> *Id.*

<sup>21</sup> *Supra* note 10 at *Debt Liquidation*, Chapter 6.500.8c(1) (September 2020).

<sup>22</sup> *Id.*

<sup>23</sup> *Supra* note 10.

<sup>24</sup> *See P.A., supra* note 4; *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 1 at Chapter 6.400.3 (September 2020).

<sup>25</sup> *See P.A., id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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