

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 \$500.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On March 4, 2000 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained left knee chondrosis causally related to factors of his federal employment. He advised that he became aware of his condition on April 1, 1999 and realized that it was caused or aggravated by his federal employment on February 26, 2000. Appellant stopped work on January 19, 2000 and returned to part-time modified employment on May 30, 2000. OWCP accepted the claim for an aggravation of left knee crepitus. It subsequently expanded acceptance of the claim to include an aggravation of chondromalacia of the left patella. OWCP paid him wage-loss compensation for partial disability.

In an August 9, 2000 claim for compensation (Form CA-7), the employing establishment indicated that appellant was covered under the Federal Employees Retirement System (FERS).

On February 15, 2019 the employing establishment requested that OWCP contact SSA to determine whether appellant was receiving SSA age-related retirement benefits, noting that he was covered by FERS.

On March 7, 2019 SSA provided OWCP with a FERS/SSA dual benefit calculation worksheet. It listed appellant's SSA rates with and without FERS from April 2007 to the present. With FERS, his SSA rates were: \$1,723.30 effective April 2007, \$1,762.90 effective December 2007, \$1,865.10 effective December 2008 through December 2010, \$1,932.20 effective December 2011, \$1,965.00 effective December 2012, \$1,994.40 effective December 2013, \$2,028.30 effective December 2014 through December 2015, \$2,034.30 effective December 2016, \$2,074.90 effective December 2017, and \$2,132.90 effective December 2019. Without FERS, appellant's SSA rates were: \$1,164.10 effective April 2007, \$1,190.80 effective December 2007, \$1,259.80 effective December 2008 through December 2010, \$1,305.10 effective December 2011, \$1,327.20 effective December 2012, \$1,347.10 effective December 2013, \$1,374.10 effective December 2014 through December 2015, \$1,347.10 effective December 2016, \$1,401.50 effective December 2017, and \$1,440.70 effective December 2019.

On September 25, 2019 OWCP advised appellant that it was adjusting his compensation to offset the portion of his SSA age-related retirement benefits attributable to his federal service. It informed him that the portion of the SSA benefits he had earned as a federal employee was part of the FERS retirement package and that FECA did not allow the simultaneous receipt of workers' compensation and federal retirement benefits.

By preliminary determination dated October 8, 2019, OWCP notified appellant that an overpayment of compensation in the amount of \$94,766.65 was created because he had concurrently received FECA wage-loss compensation benefits from April 1, 2007 through September 14, 2019 and SSA age-related retirement benefits without the appropriate FERS offset. It calculated the overpayment by determining the difference between his SSA benefit rates with and without FERS to establish the monthly offset amount for each period. OWCP multiplied the

monthly offset amount by 12, divided this amount by 13 to get the 28-day FERS offset amount, and divided that amount by 28 to get the daily amount. It then multiplied the daily offset amount by the number of days in each period to find a total overpayment of compensation in the amount of \$94,766.65. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, 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 prerecoumment hearing.

In an October 29, 2019 Form OWCP-20, appellant advised that he had assets of \$537,875.00. On October 31, 2019 his counsel requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted supporting financial documentation.

A telephonic prerecoumment hearing was held on March 6, 2020. Appellant's representative asserted that the beginning date of the overpayment was August 28, 2007, the date that appellant turned 66, rather than April 1, 2007. She further noted that OWCP should have adjusted his compensation in 2008, when it obtained earnings data from SSA. Appellant's representative contended that OWCP should waive recovery of the overpayment.

By decision dated May 6, 2020, OWCP's hearing representative finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$94,766.65 for the period April 1, 2007 through September 14, 2019 as he had simultaneously received wage-loss compensation from OWCP and SSA age-related retirement benefits without an appropriate offset. She further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as his assets and his monthly income after subtracting monthly expenses exceeded the allotted amount. The hearing representative found that OWCP should recover the overpayment by subtracting \$500.00 from appellant's continuing compensation every 28 days.

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.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 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.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

³ 5 U.S.C. § 8102.

⁴ *Id.* at § 8116.

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

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 an overpayment of compensation was created.

During the hearing before OWCP, appellant's representative challenged the commencement date of the overpayment, but acknowledged that he had concurrently received SSA age-related retirement benefits based in part on his federal service and FECA benefits beginning August 2007. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.⁷ Accordingly, fact of overpayment has been established.⁸

The Board finds, however, that the case is not in posture for decision regarding the period and the amount of the overpayment.

The evidence currently of record is insufficient to support a finding that appellant was in receipt of SSA benefits beginning April 2007. OWCP premised its finding of an overpayment beginning April 2007 on the March 7, 2019 dual benefits calculation form from SSA. On the form, SSA provided appellant's SSA rate with and without FERS from April 2007 to the present. However, appellant maintained that he failed to receive SSA benefits until August 2007, when he turned 66 years old. Given the dispute regarding when he began to receive SSA age-related retirement benefits, the case must be remanded to OWCP for further development of the factual evidence.⁹

On remand, OWCP shall consult with SSA in order to determine the correct dates during which the overpayment occurred and the exact amount of the overpayment of compensation.¹⁰ It should then issue a new preliminary overpayment determination, with an overpayment action request form, Form OWCP-20, and instructions for appellant to provide supporting financial information.¹¹ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹²

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

⁷ *R.K.*, Docket No. 19-0713 (issued October 16, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁸ *R.K.*, *id.*

⁹ *See J.L.*, Docket No. 20-0444 (issued October 16, 2020); *R.K.*, *id.*

¹⁰ *See J.H.*, Docket No. 19-1887 (issued June 16, 2020).

¹¹ *R.K.*, *supra* note 7.

¹² In light of the Board's disposition regarding the period and amount of the overpayment, the issues of waiver and recovery of the overpayment are rendered moot.

CONCLUSION

The Board finds that appellant received an overpayment of compensation 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 the case is not in posture for decision regarding the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 23, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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