

compensation and Social 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 \$489.84 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On December 7, 2011 appellant, then a 55-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his lower back when lifting the rear cargo door of his truck while in the performance of duty. He stopped work on that date. On December 19, 2011 OWCP accepted appellant's claim for lumbar sprain. On December 13, 2013 it entered him on the periodic rolls for wage-loss compensation effective January 22, 2012.

On February 8, 2019 OWCP received a completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form from SSA, which reported that appellant had been in receipt of SSA age-related retirement benefits since January 2018. The form indicated that beginning January 2018 appellant's SSA benefit rate with FERS was \$2,081.10 and without FERS was \$833.00. The form further indicated that beginning December 2018 his SSA rate with FERS was \$2,139.30 and without FERS was \$856.30.

In a letter dated March 20, 2019, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that the SSA had confirmed that a portion of his SSA benefits were attributed to his years of federal service as an employee under the FERS retirement program and that portion required an offset of his FECA compensation benefits. Specifically, OWCP indicated:

“According to the Social Security Administration your current monthly benefit amount is \$2,139.30. However, the Social Security Administration has also determined that, *if* your Federal service was *not* included in your [S]ocial [S]ecurity computation, you would only be entitled to \$856.30. Therefore, your Federal service has increased your monthly [S]ocial [S]ecurity payment by \$1,283.00. This difference of \$1,283.00 is the portion of [S]ocial [S]ecurity benefit amount attributed to Federal services and is the amount that must be offset against your compensation benefits.” (Emphasis in the original.)

OWCP further indicated:

“Since [S]ocial [S]ecurity benefits are paid monthly (12 payments per year), and compensation benefits are paid every 28 days (13 payments per year), the monthly offset amount of \$1,283.00 must be adjusted to a 28[-]day payment cycle of \$1,184.31. Accordingly, the offset of your compensation payments in the amount of \$184.3[0] will begin with your payment dated 03/30/2019. Your new net compensation payment will be \$1,509.59.”

On May 22, 2019 OWCP issued a preliminary overpayment determination notifying appellant that he had received an overpayment of compensation in the amount of \$17,634.11 because he received FECA wage-loss compensation benefits concurrently with SSA age-related

retirement benefits for the period January 1, 2018 through March 2, 2019, without an appropriate offset. It explained that it had calculated the overpayment of compensation by determining the difference between his SSA amount with and without FERS for each period, and then multiplying that amount by the number of days in each period. The FERS offset calculation worksheet indicated that OWCP had utilized a 28-day FERS offset amount of \$1,152.09 from January 1 through November 30, 2018, and \$1,184.31 from December 1, 2018 through March 2, 2019. Using these figures, OWCP calculated that the total overpayment amount was \$17,634.11. It further found that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecoupment hearing.

In an overpayment action request form dated June 4, 2019, appellant requested that OWCP make a decision based on the written evidence, disagreed with the amount of the overpayment, and requested waiver as he was found without fault. At the bottom of the form appellant indicated that he received \$1,595.00 per month from SSA, not \$2,139.30. In support of his contention, appellant submitted a May 22, 2019 letter from SSA indicating that, beginning December 2018, his full monthly SSA benefit before any deduction was \$1,595.50, and that, because SSA must round down to the whole dollar, appellant's regular monthly SSA payment was \$1,595.00.

In a completed Form OWCP-20 dated June 9, 2019, appellant indicated that he had total monthly income of \$11,895.00 including his spouse's income of \$9,800.00, SSA benefits of \$1,595.00, and Department of Veterans Affairs (VA) benefits of \$500.00. He listed monthly expenses of \$10,745.00, including property tax of \$1,250.00, food for \$1,000.00, utilities in the amount of \$1,000.00, miscellaneous expenses of \$1,000.00, and clothing for \$500.00, as well as college expenses for his children in the amounts of \$5,995.00. Appellant indicated that he had available funds of \$4,725.57. He provided financial information including a portion of his 2018 federal income tax return, credit card statements, bank account balances, and tuition bills for his two children.

On August 26, 2019 OWCP considered the financial information that appellant provided and completed a worksheet listing his total income of \$13,405.19, which included \$1,595.50 in SSA benefits, his spouse's income of \$9,800.00, FECA benefits of \$1,509.69, as well as VA benefits of \$500.00. It subtracted his total expenses and determined that he had a monthly excess of more than \$2,000.00.

By decision dated August 26, 2019, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$17,634.11 for the period January 1, 2018 through March 2, 2019 as he had received wage-loss compensation from OWCP without an appropriate offset for SSA age-related retirement benefits attributable to FERS. It noted his contention that an incorrect SSA rate was used in the overpayment calculations. OWCP determined, however, that "the amounts of \$2,081[.00] and \$2,139.30 [are] your FERS amounts. These amounts are not your monthly SSA benefit, but rather the amounts that are offset by your workers' compensation benefits due to your work in Federal service." It found that appellant was without fault in the creation of the overpayment. OWCP denied waiver of recovery of the overpayment as there was no evidence that recovery would defeat

the purpose of FECA, finding he currently had approximately \$2,000.00 income over debt each month, which exceeded the statutory amount of \$50.00 and therefore was not against equity and good conscience. It directed recovery of the overpayment by deducting \$489.84 every 28 days from his continuing compensation benefits.

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 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 fact of overpayment has been established.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, he was also receiving SSA age-related retirement benefits based upon his federal service. As noted above, a claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2018 through March 2, 2019. Consequently, the fact of overpayment has been established.

The Board further finds, however, that the case is not in posture for decision with respect to the amount of the overpayment. OWCP is required by statute and regulation to make findings

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

⁷ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

of fact and provide a statement of reasons.⁸ The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.⁹ Although the record establishes that appellant received SSA age-related retirement benefits which were attributable to his federal service, it is not clear how the amount of the overpayment was derived.

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 SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS and without FERS for the period January 1, 2018 through March 2, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$17,634.11. However, appellant submitted documentation from the SSA indicating that his actual SSA benefit amount differed from the amounts shown on the SSA/FERS dual benefits calculation form. While OWCP offered an "explanation" for the discrepancy in the SSA benefit figures used in its calculations, that explanation did insufficiently clarify the discrepancy and contained no supporting citations to legal authority. Additionally, that explanation differs from statements made in OWCP's March 20, 2019 letter to appellant.

For these reasons, the Board finds that the record does not support that the overpayment was calculated correctly for the period January 1, 2018 through March 2, 2019. Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall clarify the discrepancy between the figures provided by SSA to OWCP and appellant. It shall then determine the amount of the overpayment of compensation and issue a new preliminary overpayment determination. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds that fact of overpayment has been established. The Board further finds that this case is not in posture for decision regarding the amount of overpayment.

⁸ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides that OWCP's final decision shall contain findings of fact and a statement of reasons. *See also H.B.*, Docket No. 19-0356 (issued March 20, 2020).

⁹ *J.M.*, Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹⁰ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

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. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 9, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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