

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

_____)	
K.H., Appellant)	
)	
and)	Docket No. 19-1920
)	Issued: April 5, 2021
U.S. POSTAL SERVICE, CRAFT STATION,)	
Fayetteville, AR, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 16, 2019 appellant filed a timely appeal from a August 19, 2019 merit decision of the Office of Workers’ Compensation Programs (OWCP).¹ 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,176.16 for the period August 1, 2018 through

¹ 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). The Board, in exercising its discretion, denies his 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.

² 5 U.S.C. § 8101 *et seq.*

March 30, 2019, for which he was not at fault, as he concurrently received FECA wage-loss 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 \$300.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 13, 2009 appellant, then a 56-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome due to factors of his federal employment. He stopped work on July 20, 2004. On August 27, 2009 OWCP accepted appellant's claim for bilateral middle trigger finger, and bilateral carpal tunnel syndrome. On January 12, 2010 appellant returned to modified-duty work. On January 28, 2011 the employing establishment withdrew his modified-duty position. On February 25, 2011 OWCP entered appellant on the periodic rolls for total disability. On February 20, 2013 it expanded acceptance of his claim to include left forearm arthropathy.

On March 29, 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 July 25, 2018 when he turned 66. The form indicated that effective August 2018 appellant's SSA rate with FERS was \$1,956.30 and his SSA rate without FERS was \$945.50. The form further indicated that beginning December 2018 appellant's SSA rate with FERS was \$2,011.00 and without FERS was \$971.90.

On May 28, 2019 OWCP made a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,176.16, for which he was not at fault, because he received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits for the period August 1, 2018 through March 30, 2019. It noted that the SSA had confirmed that a portion of appellant's 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 until March 30, 2019 when his monthly compensation for wage loss was adjusted. OWCP explained that it had calculated the overpayment of compensation by determining the difference between appellant's 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 \$933.05 for the 122 days from August 1 through November 30, 2018 and \$959.17 for the 120 days from December 1, 2018 through March 30, 2019. Using these figures, OWCP calculated that the total overpayment amount was \$8,176.16. It requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP notified him that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a precoupment hearing.

In an overpayment action request form dated June 17, 2019, appellant requested that OWCP make a decision based on the written evidence and that it consider waiver of recovery of the overpayment as he was found to be without fault.

On June 17, 2019 appellant submitted a completed Form OWCP-20 and indicated that he had a total monthly income of \$4,655.00, including \$1,855.00 in SSA benefits and \$2,800.00 in FECA and other income. He listed monthly expenses of \$4,020.00 per month³ including rent or mortgage of \$680.00, food for \$400.00, clothing for \$150.00, utilities for \$670.00, credit card debt of \$1,000.00, and \$1,120.00 in miscellaneous household expenses. Appellant indicated that he had available funds of \$4,600.00.

By decision dated August 19, 2019, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,176.16 for the period August 1, 2018 through March 30, 2019 as he had received wage-loss compensation from OWCP without an appropriate offset for SSA age-related retirement benefits attributable to FERS. It found that he 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 appellant currently had approximately \$1,921.84 income over debt each month, which exceeded the statutory amount of \$50.00 and furthermore that there was no evidence that recovery would be against equity and good conscience. It directed recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation benefits until the debt was paid 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.⁴ 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.⁵

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 benefits that are attributable to the employee's federal service.⁶ 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.⁷

³ Appellant totaled this amount at \$3,883.00.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 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).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an \$8,176.16 overpayment of compensation for the period August 1, 2018 through March 30, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its August 19, 2019 decision, OWCP found that an overpayment of compensation was created for the period August 1, 2018 through March 30, 2019. The overpayment determination was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.⁸ The information provided by SSA indicated that appellant received age-related SSA retirement benefits that were attributable to federal service during the period August 1, 2018 through March 30, 2019.

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 age-related SSA retirement benefits that were attributable to federal service. The SSA provided their rate with FERS, and without FERS for specific periods commencing August 1, 2018 through March 30, 2019. OWCP provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its May 28, 2019 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1, 2018 through March 30, 2019 and finds that an overpayment of compensation in the amount of \$8,176.16 was created.⁹

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.¹⁰ 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.¹¹

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

⁸ 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).

⁹ *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁰ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹¹ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹² 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 \$50.00.¹³

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.¹⁴

OWCP 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.¹⁵ 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.¹⁶

OWCP procedures provide that a finding that a type of expense is ordinary and necessary does not mean that the amount is ordinary and necessary. The burden is on the overpaid individual to show that the expenses are reasonable and needed for a legitimate purpose. If the claims examiner or hearing representative determines that the amount of certain expenses is not ordinary and necessary, he or she must state, in writing, the reasons for the determination. The determination should be supported by rationale, which may include utilizing statistics from the Bureau of Labor Statistics that show that the overpaid individual's expenses exceed that of the range for the general population. OWCP should be careful to avoid counting an expense twice when totaling the overpaid individual's ordinary and necessary living expenses. For example, if the overpaid individual's credit card debt is already calculated as a fixed and miscellaneous living expense, the credit card expense(s) should not be added again as consumer debt expense. If the amount is added again, it would result in an excessive total for the overpaid individual's ordinary and necessary living expenses, and would make the individual appear less able to repay his or her overpayment than would actually be the case. Furthermore, OWCP should ensure that the monthly expense used for each credit card reflects only the minimum payment required by the creditor.

¹² 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 6.400.4(a)(2) (September 2018).

¹³ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4.a(3).

¹⁴ 20 C.F.R. § 10.437(a)(b).

¹⁵ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438(b).

The minimum amount should be verified, if necessary, by requiring the overpaid individual to submit copies of his or her monthly billing statement(s).¹⁷

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.¹⁸ OWCP considered appellant's financial information, as reported in appellant's statements, to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

The Board finds that OWCP properly determined that appellant did not require substantially all of his income to meet ordinary and necessary living expenses. Based on appellant's June 17, 2019 overpayment recovery questionnaire and the record, his total monthly income of \$4,655.00 and subtracting \$4,020.00 in monthly debts, resulted in \$635.00 in income over debt each month. Thus, based on appellant's statements and the record, appellant's monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses and thus recovery would not defeat the purpose of FECA.¹⁹

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worst. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁰

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA, or be against equity and good conscience, he has failed to establish that OWCP abused its discretion by refusing to waive recovery of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the

¹⁷ Federa (FECA) Procedure Manual, *supra* note 12 at Chapter 6.400.4(b)(2).

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

²⁰ *N.J.*, *supra* note 13; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

²¹ *D.M.*, Docket No. 17-0810 (issued October 2, 2017).

amount of the overpayment as the error is discovered or her attention is called to the 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$300.00, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²³ Thus, OWCP did not abuse its discretion in setting the rate of recovery.²⁴ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$300.00 every 28 days.

CONCLUSION

The Board finds that appellant received an \$8,176.16 overpayment of compensation for the period August 1, 2018 through March 30, 2019, for which he was not at 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 and properly required recovery of the overpayment by deducting \$300.00 every 28 days from his continuing compensation payments.

²² 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 10; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²³ *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

²⁴ *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 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