

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

V.R., Appellant)	
)	
and)	Docket No. 20-1429
)	Issued: August 4, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Los Angeles, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 17, 2020 appellant filed a timely appeal from a June 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,302.70 for the period August 1 through November 9, 2019, for which he was not at fault, because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset;

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that subsequent to the issuance of OWCP's June 30, 2020 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On March 17, 2010 appellant, then a 57-year-old modified letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right carpal tunnel syndrome and right trigger finger due to factors of his federal employment. His retirement coverage was noted as Federal Employees Retirement System (FERS). OWCP accepted the claim for right carpal tunnel syndrome and right trigger finger. It paid appellant wage-loss compensation on the supplemental rolls, effective December 4, 2010, and on the periodic rolls effective July 3, 2011.

On October 10, 2019 OWCP forwarded a FERS/SSA dual benefits calculations transmittal to SSA to obtain information as to whether appellant received SSA age-related retirement benefits based on federal service.

On October 28, 2019 OWCP received the completed dual benefits calculation worksheet from SSA, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset. Beginning August 1, 2019, the SSA rate with FERS was \$1,987.60 and without FERS was \$995.70.

On November 26, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of an SSA offset overpayment for the period August 1 through November 9, 2019. The total overpayment was determined to be \$3,302.70.

By letter dated November 26, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of his age-related retirement benefits attributable to federal service, his FECA wage-loss compensation had been adjusted. It advised appellant that, after the SSA offset, he would receive FECA wage-loss compensation benefits every 28 days in the amount of \$2,160.96.

On November 27, 2019 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$3,302.70 had been created for the period August 1 through November 9, 2019, because OWCP failed to deduct appellant's FERS offset from his FECA wage-loss compensation. It found him without fault in the creation of the overpayment because he was not aware, nor could he reasonably have been expected to know, that OWCP had paid compensation incorrectly. OWCP advised appellant that he could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. Additionally, it informed him that, within 30 days, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP requested that he complete the overpayment recovery questionnaire Form OWCP-20 and submit supporting financial documentation. It afforded appellant 30 days to respond.

On December 23, 2019 appellant completed a Form OWCP-20 and requested a prerecoupment hearing. He indicated that he had net monthly income of \$3,993.96 and listed \$4,444.68 in monthly expenses. Appellant advised that he had \$40.00 cash on hand, between

\$300.00 to \$509.11 in checking, and \$1,944.00 in a savings account. He also noted that he had a retirement account and an annuity which were “not active.”

On February 24, 2020 appellant completed another Form OWCP-20, indicating that he had \$3,924.87 in net monthly income, and \$4,859.22 in monthly expenses. He indicated that his assets included \$50.00 in cash, \$1,520.66 in checking accounts, \$1,560.39 in savings accounts, and \$3,322.94 in emergency funds, for a total of \$6,453.99.

A prerecoupment hearing was held *via* telephone on April 7, 2020. Appellant was represented by counsel. At the hearing, he explained that he had two timeshare properties. Appellant noted that one property was purchased for \$20,000.00 and the other was purchased for \$16,000.00. He explained they were paid off, but he had to pay maintenance fees. Appellant also testified that his expenses exceeded his income by \$600.00 per month.

By decision dated May 14, 2020, OWCP’s hearing representative finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$3,302.70 for the period August 1 through November 9, 2019, for which he was without fault, because it had failed to offset his wage-loss compensation payments by the portion of his SSA age-related retirement benefits that was attributable to federal service. The hearing representative denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. The hearing representative noted that appellant’s liquid assets exceeded the allowable resource base of \$6,200.00 for an individual with no dependents. The hearing representative also noted that appellant owned two timeshare properties he had purchased for \$20,000 and \$16,000.00, that there was no estimate of the current fair market value, and that equity in a time share or a second home counted toward the resource base. The hearing representative determined that OWCP would recover the overpayment by deducting \$100.00 every 28 days from appellant’s continuing compensation payments.³

By decision dated June 30, 2020, OWCP’s hearing representative reissued the May 14, 2020 decision.⁴

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 duty.⁵ 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.⁶

³ The hearing representative assessed an interest rate of one percent.

⁴ The hearing representative found that a technical error had occurred with regard to the interest rate assessed in the May 14, 2020 decision, and that the interest rate was two percent, effective January 1, 2020.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

Section 10.421(d) of OWCP's implementing regulations requires that it reduce the amount of compensation by the amount of SSA benefits that are attributable to the federal service of the employee.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,302.70 because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period August 1 through November 9, 2019 without an appropriate offset.

The record indicates that, while appellant was receiving compensation for disability under FECA, he was also receiving SSA age-related retirement benefits during the period at issue. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.⁹ Consequently, the fact of the overpayment has been established.

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 benefit rate with FERS and without FERS for the period commencing August 1 through November 9, 2019. OWCP provided its calculation for the relevant period based on the SSA worksheet and in its November 27, 2019 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period August 1 through November 9, 2019, and finds that an overpayment of compensation in the amount of \$3,302.70 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is

⁷ 20 C.F.R. § 10.421(d); *see B.B.*, Docket No. 19-0822 (issued February 18, 2020); *B.F.*, Docket No. 18-1345 (issued February 6, 2019).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also M.D.*, Docket No. 19-1500 (issued February 24, 2020); *G.K.*, Docket No. 18-0243 (issued August 17, 2018).

⁹ *See C.B.*, Docket No. 20-0031 (issued July 27, 2020); *D.C.*, Docket No. 19-0118 (issued January 15, 2020).

¹⁰ *See L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, *id.*

without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”¹¹

Recovery of an overpayment will defeat the purpose of FECA when 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.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 Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁴ An individual’s liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁵

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.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

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

¹¹ 5 U.S.C. § 8129(b).

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

¹⁴ *See id.* at Chapter 6.400.4(a)(2) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4(b)(3).

¹⁶ 20 C.F.R. § 10.437(a)(b).

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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. It considered appellant's financial information to determine if recovery of the overpayment would defeat the purpose of FECA. Appellant provided his current monthly income and expenses in a Form OWCP-20 on February 24, 2020, as well as a summary of his liquid assets for a total of \$6,453.99 in liquid assets. He also noted that he had retirement and annuities, which were "not active." Appellant testified that he owned two timeshare properties, which OWCP found could be considered towards the asset base. The evidence of record, therefore, establishes that appellant's liquid assets exceeded the base asset amount of \$6,200.00 for an individual.¹⁸ It was, therefore, unnecessary for OWCP to consider whether his monthly income exceeded his monthly ordinary and necessary expenses by more than \$50.00.¹⁹

Appellant has also not established that recovery of the overpayment would be against equity and good conscience. He has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on the overpayment he gave up a valuable right or changed his position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.²⁰

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.²¹

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation 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 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 hardship.²²

The determination that the debt has been compromised does not carry the right to a hearing or to review by the Board.²³

¹⁸ See *supra* note 12.

¹⁹ *Id.*

²⁰ 20 C.F.R. § 10.437(a)(b).

²¹ *Id.* at § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²² *Id.*

²³ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.6 (September 2018).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

In setting the recovery rate at \$100.00 every 28 days, OWCP explained that the factors set forth at 20 C.F.R. § 10.441(a) had been considered to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.²⁴ Thus, OWCP did not abuse its discretion in setting the rate of recovery.²⁵ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$100.00 every 28 days.²⁶

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$3,302.70 for the period August 1 to November 9, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits 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 \$100.00 from appellant's continuing compensation payments every 28 days.

²⁴ See *R.D.*, Docket No. 19-0159 (issued April 17, 2020); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

²⁵ See *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, *supra* note 8.

²⁶ On appeal, appellant argues that the interest rate should be assessed at one percent as opposed to two percent. However, pursuant to OWCP's procedures, interest is assessed at the rate in effect on the date of the final overpayment determination. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.500.5(f) (September 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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