

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

H.D., Appellant)	
)	
and)	Docket No. 21-0838
)	Issued: November 16, 2021
DEPARTMENT OF THE ARMY, U.S. ARMY)	
GARRISON, ABERDEEN PROVING GROUND,)	
Aberdeen, MD, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2021 appellant filed a timely appeal from a May 3, 2021 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,256.74 for which he was without fault for the period December 1, 2019 through February 27, 2021, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without an appropriate offset; (2) whether it properly denied waiver of recovery of the

¹ 5 U.S.C. § 8101 *et seq.*

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$109.34 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On September 16, 2004 appellant, then a 50-year-old security guard, filed a notice of recurrence (Form CA-2a) alleging that he reinjured his back on August 19, 2004 when bending and stooping while in the performance of duty.² OWCP accepted the claim for temporary aggravation of an L5-S1 herniated disc, subsequently modified to displacement of lumbar intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the supplemental rolls, effective October 5, 2004, and on the periodic rolls, effective July 10, 2005.

On September 6, 2005 appellant underwent an OWCP-authorized partial L5-S1 discectomy and arthrodesis. He remained off work.

Appellant was terminated from the employing establishment effective January 21, 2006. A notification of personnel action, Standard Form (SF) 50-B, dated January 21, 2006 indicated that appellant's service computation date was November 15, 1997 and that his retirement plan was under the Federal Employees Retirement System (FERS) and Federal Insurance Contribution Act (FICA).

Following vocational rehabilitation efforts, by notice dated June 24, 2008 and finalized August 14, 2008, OWCP determined that the constructed position of security clerk, *Dictionary of Occupational Titles* (DOT) No. 205.362-022, properly represented his wage-earning capacity, with entry level wages of \$400.00 a week. It reduced appellant's compensation, effective August 31, 2008, to reflect his loss of wage-earning capacity (LWEC). Appellant remained off work.

On January 27, 2021 OWCP provided SSA with a dual benefits calculation form. It listed the computation period as December 23, 2015 onward. On February 19, 2021 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from December 1, 2019 through December 1, 2020. Beginning January 1, 2019, the SSA rate with FERS was \$1,312.00 and without FERS was \$1,029.00. Beginning December 1, 2020, the SSA rate with FERS was \$1,329.00 and without FERS was \$1,042.00.

In a FERS offset calculation form dated March 3, 2021, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant period and calculated a total overpayment in the amount of \$4,256.74. It found that, during the period December 1, 2019 through November 30, 2020, appellant received an overpayment of compensation in the amount

² The present claim was assigned File No. xxxxxx561 by OWCP. Previously, on March 19, 2004 under OWCP File No. xxxxxx160, appellant filed a traumatic injury claim (Form CA-1) alleging that on March 11, 2004 he sustained a lumbar injury during required physical training while in the performance of duty. OWCP accepted the claim for thoracolumbar strain and sprain. On June 29, 2006 it administratively combined OWCP File Nos. xxxxxx160 and xxxxxx561, with the latter serving as the master file number.

of \$3,414.66. During the period December 1, 2020 through February 27, 2021, appellant received an overpayment of compensation in the amount of \$842.08.

In a letter dated March 8, 2021, 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 age-related retirement benefits were attributed to his years of federal service as an employee under FERS and that portion required an offset of his FECA compensation benefits in the amount of \$264.92 every 28 days. OWCP indicated that, to account for his SSA offset, appellant's FECA wage-loss compensation would be adjusted to reflect a new net compensation amount of \$98.33 effective February 28, 2021.

On March 8, 2021 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$4,256.74 for the period December 1, 2019 through February 27, 2021 because the SSA/FERS offset was not applied to payments for this period. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submitted a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request waiver of recovery of the overpayment. It requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his income and expenses. OWCP advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. It provided appellant with an overpayment action request form and further notified him 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 precoupment hearing.

In response, appellant submitted an overpayment action request form signed on March 19, 2021. He requested waiver of recovery of the overpayment as he had been found without fault and to repay the debt would cause severe financial hardship. In an attached Form OWCP-20, signed on March 19, 2021, appellant reported monthly SSA income of \$1,307.00, and FECA benefits of \$98.00. He listed expenses as: \$700.00 for mortgage; \$200.00 for food; \$50.00 for clothing; \$200.00 for utilities; and \$400.00 for a vehicle loan. Appellant listed assets of \$8.00 in a checking account. He did not attach supporting financial documentation as requested.

By decision dated May 3, 2021, OWCP finalized the March 8, 2021 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$4,256.74 because it had failed to offset his compensation payments for the period December 1, 2019 through February 27, 2021 by the portion of his SSA age-related retirement benefits that were attributable to federal service and that appellant did not have actual knowledge of the calculation error. It further found that appellant was without fault in the creation of the overpayment, but 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 as appellant had not responded to the request for financial information. OWCP further found that recovery of the overpayment would not be against equity and good conscience as appellant had not shown that he would experience severe financial hardship in attempting to repay the debt, and that he had not asserted detrimental reliance. It required recovery of the overpayment by deducting \$109.34 every 28 days from appellant's continuing compensation payments.

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.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 that OWCP reduce the amount of compensation by the amount of SSA age-related benefits that are attributable to federal service of the employee.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 OWCP properly determined that appellant received an overpayment of compensation in the amount of \$4,256.74 for which he was without fault, for the period December 1, 2019 through February 27, 2021, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service from December 1, 2019 through February 27, 2021. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA age-related retirement 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 its rate with FERS and without FERS during the specific period December 1, 2019 through February 27, 2021. OWCP provided its calculation for each relevant period based on SSA's worksheet.

³ *Supra* note 1 at § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (February 3, 1997).

⁷ *See supra* note 5; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

The Board has reviewed OWCP's calculation of benefits received by appellant for the period December 1, 2019 through February 27, 2021 and finds that an overpayment in the amount of \$4,256.74 has been established.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."⁸ Section 10.438 of OWCP regulations provides 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁹

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹⁰

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹¹ 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 \$50.00.¹²

OWCP's procedures provide that the 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.¹³ An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Non-liquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 10.438.

¹⁰ *Id.* at §§ 10.434-10.437.

¹¹ *Id.* at § 10.436.

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(3) (September 2020).

¹³ *Id.* at Chapter 6.400.4(a)(2).

immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁴

ANALYSIS -- ISSUE 2

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

Although 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.¹⁵ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁶

In its preliminary overpayment determination dated March 8, 2021, OWCP clearly explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. While appellant submitted a completed Form OWCP-20, he did not submit the supporting financial documentation of his income, assets, and expenses necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁷

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$4,256.74.

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.¹⁸ Section 10.441(a) of OWCP's regulations provides:

“When 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 account the probable extent of future payments, the rate of compensation, the financial

¹⁴ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁵ 20 C.F.R. § 10.436.

¹⁶ *Id.* at § 10.438.

¹⁷ *P.N.*, Docket No. 20-1159 (issued April 20, 2021); *see S.W.*, Docket No. 20-0544 (issued September 21, 2020).

¹⁸ 20 C.F.R. § 10.441(a).

circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$109.34 from appellant’s continuing compensation payments every 28 days..

In this case, appellant responded to the preliminary overpayment determination and submitted a completed Form OWCP-20, but did not submit supporting documentation. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ OWCP required recovery of the overpayment by deducting \$109.34 from appellant’s continuing compensation payments every 28 days. This amount, however, imposes a recovery rate that exceeds appellant’s net compensation amount of \$98.33. It is, therefore, in error.²¹ The case will, therefore, be remanded to OWCP for recalculation of the rate of recovery of the \$4,256.74 overpayment from appellant’s continuing compensation benefits to be followed by a *de novo* decision.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$4,256.74, for the period December 1, 2019 through February 27, 2021 for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment. The Board further finds, however, that OWCP improperly required recovery of the overpayment by deducting \$109.34 from appellant’s continuing compensation payments every 28 days.

¹⁹ *Id.*

²⁰ *S.H.*, Docket No. 20-1585 (issued August 4, 2021); *see A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: November 16, 2021
Washington, DC

Alec J. Koromilas, 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