

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

C.B., Appellant)	
)	
and)	Docket No. 22-0539
)	Issued: December 7, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
New Kensington, PA, 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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 28, 2022 appellant filed a timely appeal from a February 28, 2022 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 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 \$116.96 on July 17, 2021 for which he was without fault because he concurrently received Office of Personnel Management (OPM) retirement benefits and FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 21, 1997 appellant, then a 44-year-old part-time flexible letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right knee and thigh while in the performance of duty. OWCP accepted the claim for a right knee sprain, right lower leg arthropathy, complications due to a right internal joint prosthesis, and a loose body in the right knee. It paid appellant wage-loss compensation for intermittent disability until August 16, 2006, when he stopped work and did not return. OWCP paid him wage-loss compensation on the periodic rolls, effective November 26, 2006.

In an April 5, 2021 signed election of benefits (Form CA-1105), appellant elected to receive OPM retirement benefits in lieu of FECA workers' compensation benefits, effective July 6, 2021.

On May 4, 2021 OWCP advised OPM that appellant had elected to receive OPM benefits, effective July 6, 2021, and enclosed a copy of his election form.

On September 7, 2021 appellant provided OWCP with a copy of a September 6, 2021 letter that he had sent to OPM, asking why he had not yet received OPM retirement benefits.

On September 13, 2021 appellant requested that OWCP provide him with another election form, so that he could elect FECA compensation benefits in lieu of OPM retirement benefits as OPM had not processed his Form CA-1105 election of benefits form. He related that OWCP had paid him through July 17, 2021 even though his last day in pay status was July 6, 2021.

On September 20, 2021 appellant informed OWCP that he had received payment from OPM and clarified that he would not be requesting FECA compensation benefits in lieu of his OPM retirement benefits after all.

In a letter dated October 20, 2021, appellant advised OWCP that OPM had used July 18, 2021 as his start date for OPM benefits even though his CA-1105 form had an effective date of July 6, 2021. He asked whether he should change the effective date on his CA-1105 form or notify OPM that his last day in pay status with OWCP was July 6, 2021.

In a November 8, 2021 Form CA-1105, appellant again elected OPM retirement benefits in lieu of FECA compensation benefits, effective July 17, 2021. In an accompanying letter, he advised again that OPM had used July 18, 2021 as his start date for OPM benefits.

On December 9, 2021 OWCP notified OPM that appellant had elected to receive OPM retirement benefits, in lieu of FECA compensation, effective July 17, 2021. It indicated that OPM should commence monthly retirement benefit payments, effective July 17, 2021.

On January 21, 2022 OWCP issued a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$116.96 on July 17, 2021 because he concurrently received both FECA benefits and OPM retirement benefits during this period, which was a prohibited dual benefit. It further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a

reasonable payment method and advised him that he could request waiver of recovery of the overpayment. It further requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and 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 prerecoument hearing.

On January 25, 2022 appellant asserted that OPM had begun his payments on July 18, 2021, not July 17, 2021.

In a statement received on January 31, 2022, appellant related that he had not told OPM the date to begin his retirement payments. He indicated that OPM had informed him by telephone that it had started his payments on July 18, 2021 as OWCP had paid him through July 17, 2021. Appellant included an e-mail from OPM dated October 25, 2021 indicating that it had paid him for the period July 18 through August 30, 2021.

In an overpayment action request form, appellant disagreed that the overpayment had occurred. He advised that OPM began paying him a monthly annuity on July 18, 2021 and, thus, he had not received an overpayment of compensation on July 17, 2021. In an OWCP-20 form, appellant provided his assets, monthly income, and expenses.

By decision dated February 28, 2022, OWCP finalized its finding that appellant received a \$116.96 overpayment of compensation on July 17, 2021 because he concurrently received OPM retirement benefits and FECA wage-loss compensation. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery, noting that he had not provided supporting financial documentation with his OWCP-20 form. OWCP determined that appellant should forward the full amount of the overpayment, \$116.96, within 30 days as repayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA² provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³ Section 8116 of FECA defines the limitations on the right to receive compensation benefits.⁴ Section 8116(a) provides that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans

² *Id.*

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

Affairs, unless such benefits are payable for the same injury or the same death being compensated for under FECA.⁵

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁶ The beneficiary must elect the benefit that he or she wishes to receive.⁷

OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$116.96 on July 17, 2021.

On April 5, 2021 appellant elected to receive OPM retirement benefits in lieu of FECA compensation, effective July 6, 2021. OWCP, however, continued to pay him wage-loss compensation for temporary total disability through July 17, 2021.

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁹ The clear language of section 8116(a) of FECA, section 10.421(a) of OWCP's implementing regulations, and OWCP's procedures prohibit the concurrent receipt of FECA wage-loss benefits and a federal retirement annuity.¹⁰

OWCP based its overpayment findings on its determination that appellant had received prohibited dual OPM and FECA benefits on July 17, 2021. However, there is no evidence of record establishing that he actually received OPM retirement benefits during this period.¹¹ An email dated October 25, 2021 from OPM to appellant established that it did not begin paying appellant retirement benefits until July 18, 2021. The Board, thus, finds that OWCP had not established fact of overpayment.

⁵ *Id.* at § 8116(a)

⁶ 20 C.F.R. § 10.421(a).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(a) (January 1997); *see also D.J.*, Docket No. 20-0004 (issued May 21, 2020); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

⁹ 5 U.S.C. § 8116(a).

¹⁰ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.421(a); Federal (FECA) Procedure Manual, *supra* note 8.

¹¹ *See V.B.*, Docket No. 19-1874 (issued June 4, 2020); *C.P.*, Docket No. 19-0732 (issued September 5, 2019); *J.M.*, Docket No. 15-1604 (issued May 23, 2016).

Therefore, the Board finds that OWCP failed to meet its burden of proof to establish that the overpayment occurred.¹²

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$116.96 on July 17, 2021, for which he was without fault, because he concurrently received OPM retirement benefits and FECA wage-loss compensation benefits.¹³

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 7, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹² See *M.G.*, Docket No. 20-0867 (issued October 13, 2021); *C.P.*, Docket No. 19-0732 (issued September 5, 2019); *J.A.*, Docket No. 18-0259 (issued August 5, 2019).

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.