

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

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**B.W., Appellant** )

and )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Roxbury, MA, Employer** )  
\_\_\_\_\_ )

**Docket No. 21-0277**  
**Issued: May 6, 2022**

*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  
JANICE B. ASKIN, Judge

**JURISDICTION**

On December 3, 2020<sup>1</sup> appellant filed a timely appeal from a June 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees'

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from June 10, 2020, the date of OWCP's decision, was December 7, 2020. Since using December 14, 2020, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 3, 2020, which renders the appeal timely filed.

<sup>2</sup> 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). Appellant has not asserted reasons why oral argument is necessary in support of the appeal. The Board, in exercising its discretion, denies appellant's request for oral argument because the issues 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.

Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>4</sup>

### **ISSUE**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,186.27 for the period December 1, 2018 through February 1, 2020, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On February 12, 2018 appellant, then a 65-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a hammer toe bunion and a curved toe on his left foot due to factors of his federal employment, including prolonged walking on concrete pavement for approximately 14 hours per day at work. On December 10, 2018 OWCP accepted his claim for hallux rigidus, left foot and other hammer toe(s) (acquired), left foot. Appellant stopped work on December 30, 2017. OWCP paid him wage-loss compensation on the supplemental rolls, effective February 1, 2018.

In a December 13, 2019 financial disclosure statement (Form CA-1032), appellant indicated that he had received benefits from SSA as part of an annuity for federal service.

On December 17, 2019 OWCP forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits worksheet to the SSA to obtain the information necessary to determine whether an offset of compensation benefits was required.

On January 22, 2020 SSA completed the dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since December 2018. The form reported his SSA age-related retirement benefit rates with and without a FERS offset as follows: beginning December 2018, the SSA rate with FERS was \$2,335.90 and without FERS was \$556.20; beginning January 2019, the SSA rate with FERS was \$2,337.10 and without FERS was \$556.20; and beginning December 2019, the SSA rate with FERS was \$2,374.40 and without FERS was \$565.00.

On February 3, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it calculated the daily FERS offset amount and multiplying the amount by the number of days for the period December 1, 2018 through February 1, 2020. The form indicated that, from

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the June 10, 2020 decision, OWCP received 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.*

December 1 to 31, 2018, appellant received an overpayment of \$1,818.81, for the period January 1 through November 30, 2019, he received an overpayment of \$19,609.47, and for the period December 1, 2019 through February 1, 2020, he received an overpayment of \$3,757.98, for a total overpayment of \$25,186.27.

In a letter dated February 3, 2020, OWCP notified appellant that, based on the information provided by SSA regarding the amount of his age-related retirement benefits attributable to federal service, his FECA compensation would be reduced to \$1,969.78 every 28 days.

On May 5, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,186.27 had been created for the period December 1, 2018 through February 1, 2020 because appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP further provided an overpayment action request form and notified appellant 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. No response was received.

By decision dated June 10, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$25,186.27 for the period December 1, 2018 through February 1, 2020 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery, because he had not submitted evidence in response to its preliminary overpayment determination. OWCP required recovery of the overpayment by payment in-full within 30 days.

### **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.<sup>5</sup> 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.<sup>6</sup>

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

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

the employee.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,186.27 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period December 1, 2018 through February 1, 2020, 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.<sup>9</sup> The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to his federal service from December 1, 2018 through February 1, 2020. Consequently, the fact of the 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. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS during the applicable period. OWCP found that, since SSA age-related retirement benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. This amount differed for each period beginning December 2018. OWCP calculated that the lack of offset from December 1, 2018 through February 1, 2020, resulting in an overpayment total of \$25,186.27. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$25,186.27, thus creating an overpayment of compensation in that amount, for the period December 1, 2018 through February 1, 2020.

### **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."<sup>10</sup> Section 10.438 of OWCP's 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

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<sup>7</sup> 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>8</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>9</sup> *Supra* note 6; *see D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>10</sup> 5 U.S.C. § 8129.

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.<sup>11</sup>

### 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 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.<sup>12</sup> Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>13</sup>

In its preliminary overpayment determination, dated May 5, 2020, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. It advised that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant did not provide a completed Form OWCP-20 or otherwise submit financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Consequently, as appellant has not submitted the information required under 20 C.F.R. § 10.438 of OWCP's regulations, necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>14</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,186.27 as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period December 1, 2018 through February 1, 2020, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>11</sup> 20 C.F.R. § 10.438.

<sup>12</sup> *Id.* at § 10.436.

<sup>13</sup> *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

<sup>14</sup> *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board