

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

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W.T., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
BARKSDALE AIR FORCE BASE, LA, )  
Employer )  
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**Docket No. 22-0225  
Issued: May 12, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 30, 2021 appellant filed a timely appeal from a November 1, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$39,065.45 for the period January 1, 2017 through September 11, 2021 for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the November 1, 2021 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.*

the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$725.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 8, 2006 appellant, then a 55-year-old aircraft ordinance systems mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2006 he pulled a muscle in his low back when loading a practice bomb while in the performance of duty. OWCP accepted the claim for lumbar sprain. It subsequently expanded the acceptance of the claim to include lumbosacral spondylosis without myelopathy, other symptoms referable to the back, and thoracic spondylosis without myelopathy.

In a June 2, 2007 claim for compensation (Form CA-7), the employing establishment advised that appellant was covered under the Federal Employees Retirement System (FERS).<sup>4</sup>

OWCP paid appellant wage-loss compensation for total disability on the supplemental rolls effective May 9, 2007, and on the periodic rolls effective September 2, 2007.

On June 29, 2021 OWCP sent a FERS/SSA dual benefits form to SSA for its completion.

On September 18, 2021 SSA provided a completed FERS/SSA dual benefits form, which listed appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period January 2017 through December 2020. It reported that beginning January 1, 2017, appellant's SSA rate with FERS was \$2,074.60 and without FERS was \$1,407.50, beginning December 2017, his SSA rate with FERS was \$2,116.00 and without FERS was \$1,435.60, beginning December 2018, his SSA rate with FERS was \$2,175.20 and without FERS was \$1,475.70, beginning December 2019, his SSA rate with FERS was \$2,210.00 and without FERS was \$1,499.30, and beginning December 2020, his SSA rate with FERS was \$2,238.80 and without FERS was \$1,518.70.

A September 21, 2021 computation adjustment sheet generated the amount that OWCP should have offset each 28-day compensation period from January 7, 2017 through September 11, 2021.

In a September 21, 2021 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to his federal service from his FECA wage-loss compensation. It found that with the SSA offset, he was entitled to net compensation every 28 days of \$2,902.36.

In a preliminary overpayment determination dated September 24, 2021, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the

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<sup>3</sup> Docket No. 09-2312 (issued June 11, 2010).

<sup>4</sup> An October 11, 2007 notification of personnel action Standard Form (SF)50-B indicated that a appellant had retirement coverage under FERS.

amount of \$39,065.45 for the period January 1, 2017 through September 11, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It further advised him of its preliminary determination that he was at fault in the creation of the overpayment. OWCP requested that appellant 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 he provide 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 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.

In an October 21, 2021 overpayment action request form, appellant requested a decision on the written evidence. He contended that an overpayment had not occurred and requested waiver of recovery. Appellant contended that his compensation was exempt from an SSA offset because of the “windfall elimination provision.” He submitted information regarding the windfall elimination provision. Appellant submitted a completed Form OWCP-20.<sup>5</sup>

By decision dated November 1, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$39,065.45 for the period January 1, 2017 through September 11, 2021 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$725.00 from appellant’s continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA<sup>6</sup> 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.<sup>7</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>8</sup>

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 retirement benefits that are attributable to the employee’s federal service.<sup>9</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA

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<sup>5</sup> The OWCP-20 form is largely illegible.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> 5 U.S.C. § 8102.

<sup>8</sup> *Id.* at § 8116.

<sup>9</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation.

OWCP paid appellant wage-loss compensation for total disability effective May 9, 2007. Appellant received SSA age-related retirement benefits from January 1, 2017 through September 11, 2021. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>11</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2017 through September 11, 2021. The Board thus finds that fact of overpayment is established.

The Board further finds, however, that the case is not in posture for decision with respect to the amount of the overpayment. To determine the amount of the overpayment, the portion of 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 appellant's age-related retirement benefit rates with FERS and without FERS for the period January 1, 2017 through September 11, 2021. It provided a computer worksheet showing the amount that it should have offset for each 28-day period from January 1, 2017 through September 11, 2021; however, the mathematical calculations performed by the computer program are not reproducible from the information provided.<sup>12</sup> OWCP, however, did not set forth its calculations of the overpayment on a FERS offset overpayment calculation worksheet.

Therefore it remains unclear how OWCP calculated the amount of the overpayment. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.<sup>13</sup> Accordingly, the Board finds that the case must be remanded to OWCP to set forth its calculations of the overpayment created for the period January 1, 2017 through September 11, 2021. OWCP should then issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>14</sup>

On appeal, appellant contends that he did not receive an overpayment of compensation because of the windfall elimination provision. However, the windfall elimination provision does

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<sup>10</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>11</sup> 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, *supra* note 9.

<sup>12</sup> *See J.K.*, Docket No 20-1545 (issued July 27, 2021).

<sup>13</sup> *See J.V.*, Docket No. 20-0952 (issued February 2, 2022); *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

<sup>14</sup> *See G.R.*, Docket No. 21-0209 (issued December 20, 2021); *L.D.*, *supra* note 11.

not affect employees covered under FERS as they contribute to SSA. As discussed, OWCP's regulations require it to offset from a claimant's wage-loss compensation the amount of SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>15</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because he concurrently received SSA age-related retirement benefits while also receiving FECA benefits, without an appropriate offset. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.<sup>16</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 12, 2022  
Washington, DC

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

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

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

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<sup>15</sup> *Supra* note 10.

<sup>16</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.