



## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,473.08 for the periods July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 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 the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$438.46 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>4</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 March 6, 2007 appellant, then a 62-year-old technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his lower back on that date when adjusting his driver's seat while in the performance of duty. OWCP accepted his claim for a lumbar sprain and permanent aggravation of a herniated disc. Appellant returned to work as an office assistant on June 13, 2011. OWCP paid him wage-loss compensation on the supplemental rolls, effective June 7, 2007 and on periodic rolls, effective September 30, 2007, and subject to a wage-earning capacity determination commencing June 13, 2011. Appellant's retirement coverage was listed as Federal Employees Retirement System (FERS).

On June 23, 2021 OWCP forwarded a FERS/SSA dual benefits form to SSA.<sup>5</sup>

On September 7, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA wherein SSA advised that appellant received SSA disability benefits for the period July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021. SSA explained that from February 1, 2008 through November 30, 2011, he received disability compensation benefits and no offset was required during this period. SSA reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from July 2007 through January 2008 and December 2011 through November 2021. Beginning July 2007, the SSA rate with FERS was \$918.00 and without FERS was \$773.00. Beginning December 2007, the SSA rate with FERS was \$939.00 and without FERS was \$791.00. Beginning January 2008, the SSA rate with FERS was \$945.00 and without FERS was \$791.00. Beginning December 2011, the SSA rate with FERS was \$1,313.00 and without FERS was \$1,099.00. Beginning January 2012, the SSA rate with FERS was \$1,315.00 and without FERS was \$1,099.00. Beginning December 2012, the SSA rate with FERS was \$1,337.00 and without FERS was \$1,118.00. Beginning January 2013, the SSA rate with FERS was \$1,349.00 and without FERS was \$1,118.00. Beginning December 2013, the SSA rate with FERS was \$1,369.00 and without FERS

---

<sup>4</sup> Docket No. 12-1212 (issued January 24, 2013).

<sup>5</sup> On March 8, 2019 OWCP initially forwarded a FERS/SSA dual benefits form to SSA. On March 15, 2019 it received a completed FERS/SSA dual benefits form from SSA. On May 16, June 27, October 7, 2019 March 10, 2020, May 18, and June 23, 2021 OWCP requested clarification from SSA regarding the FERS/SSA dual benefits form. On September 7, 2021 SSA provided clarification.

was \$1,134.00. Beginning January 2014, the SSA rate with FERS was \$1,380.00 and without FERS was \$1,134.00. Beginning December 2014, the SSA rate with FERS was \$1,404.00 and without FERS was \$1,154.00. Beginning January 2015, the SSA rate with FERS was \$1,415.00 and without FERS was \$1,154.00. Beginning December 2015, the SSA rate with FERS was \$1,415.00 and without FERS was \$1,154.00. Beginning January 2016, the SSA rate with FERS was \$1,421.00 and without FERS was \$1,154.00. Beginning December 2016, the SSA rate with FERS was \$1,426.00 and without FERS was \$1,157.00. Beginning January 2017, the SSA rate with FERS was \$1,432.00 and without FERS was \$1,157.00. Beginning December 2017, the SSA rate with FERS was \$1,461.00 and without FERS was \$1,180.00. Beginning January 2018, the SSA rate with FERS was \$1,467.00 and without FERS was \$1,180.00. Beginning December 2018, the SSA rate with FERS was \$1,508.00 and without FERS was \$1,213.00. Beginning January 2019, the SSA rate with FERS was \$1,516.00 and without FERS was \$1,213.00. Beginning December 2019, the SSA rate with FERS was \$1,540.00 and without FERS was \$1,232.00. Beginning January 2020, the SSA rate with FERS was \$1,547.00 and without FERS was \$1,232.00. Beginning November 2020, the SSA rate with FERS was \$1,547.60 and without FERS was \$1,232.60. Beginning December 2020, the SSA rate with FERS was \$1,567.50 and without FERS was \$1,248.50.

In a preliminary overpayment determination dated October 6, 2021, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$32,569.66, for the periods June 1, 2007 through January 31, 2008 and December 1, 2011 through September 11, 2021, because he received FECA wage-loss compensation benefits and SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. It determined that he was without fault in the creation of the overpayment. OWCP advised that the effective date of appellant's entitlement to SSA benefits was June 1, 2007. It 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. OWCP further requested that appellant provide supporting financial documentation including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, it provided an overpayment action request form and further notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precoupment hearing.

On November 5, 2021 appellant submitted an overpayment action request form and requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review.

On January 25, 2022 an OWCP hearing representative performed a preliminary review and determined that the case was not in posture for a hearing. The hearing representative vacated the decision dated October 6, 2021 and remanded the case for further proceedings.<sup>6</sup>

---

<sup>6</sup> The hearing representative instructed OWCP to recalculate the amount of the overpayment for the period June 1 through July 1, 2007 explaining that for this period appellant's "without FERS" amount exceeded the "with FERS" amount and therefore there was no offset from compensation during this period. She noted that the overpayment period would begin July 1, 2007. OWCP's hearing representative further instructed OWCP to recalculate the amount of overpayment for the period September 12, 2021 through November 6, 2021 because no offset from compensation was calculated for this period. She indicated that OWCP must issue a decision clear enough for the reader to understand the precise defect of the claim and the kind of evidence to overcome it.

On April 5, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021 and computed a total overpayment amount of \$33,473.08.

In a preliminary overpayment determination dated April 5, 2022, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$33,473.08, for the periods July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021, because he received FECA wage-loss compensation benefits and SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. It determined that he was without fault in the creation of the overpayment. OWCP advised that the effective date of appellant's entitlement to SSA benefits was June 1, 2007; however, the overpayment period did not begin until July 1, 2007 because for the period June 1 through July 1, 2007 his "without FERS" amount exceeded the "with FERS" amount therefore there was no offset from compensation during this period. It further noted that he received disability benefits from SSA for the period February 1, 2008 through November 30, 2011 and no offset was required for this period. OWCP requested that appellant submit a completed 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 that support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precoupment hearing.

On May 5, 2022 appellant submitted an overpayment action request form and requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review. He noted that he contested the overpayment and requested waiver because he was found to be without fault. Appellant stated that the overpayment was due to incorrect information provided by OWCP. He noted that he separated from the Federal Government on January 31, 2022 and his funds are committed to his medical expenses.

Appellant submitted a Form OWCP-20 signed on May 4, 2022, in which he reported his monthly income as \$1,443.40 and \$1,266.50 from SSA, \$152.00 from other benefits, resulting in total monthly income of \$2,861.90. He reported expenses totaling \$2,890.00. Appellant indicated monthly expenses of \$900.00 for rent or mortgage, \$500.00 for food, \$150.00 for clothing, \$840.00 for utilities, and other miscellaneous expenses of \$250.00. He noted monthly installment debt of \$250.00. Appellant further noted cash on hand of \$50.00, a checking account balance of \$264.00, and a savings account balance of \$400.00. He did not submit supporting financial documentation.

On August 8, 2022 OWCP held a telephonic precoupment hearing.

Appellant submitted an affidavit providing an accounting of his monthly household expenses. He reported that his total monthly income included \$944.40 for an interim pension, \$500.00 for a state pension, \$1,692.00 for workers' compensation benefits, \$1,266.50 from SSA, \$152.00 from the Department of Veterans Affairs (VA), and \$2,674.50 from his wife, resulting in total monthly income of \$7,229.40. Appellant reported expenses totaling \$4,253.50 for himself and \$2,772.17 for his wife, for a total of \$7,025.67. He indicated monthly expenses of \$990.00 for rent or mortgage, \$275.00 for home repairs and maintenance, \$550.00 for food for himself and \$275.00 for his wife, \$385.00 for clothing for both, \$940.00 for utilities, \$246.00 for insurance for

both, \$150.17 for storage for his wife, \$462.00 for personal care and hygiene for both, \$715.00 for automobile maintenance for both, \$250.00 for a personal loan for his wife, \$880.00 for medical/dental and prescriptions for both, \$330.00 for recreation for both, \$412.50 for miscellaneous for both, and \$165.00 for vitamins and supplements for both.

By decision dated October 17, 2022, OWCP's hearing representative finalized the April 5, 2022 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$33,473.08 for the period July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. OWCP's hearing representative further found that he 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 or be against equity and good conscience. The hearing representative indicated that appellant did not provide documentation for his list of expenses; however, she accepted the reported expenses as reasonable, except his wife's separate food expense of \$275.00. She required recovery of the overpayment by deducting \$438.46 from appellant's continuing compensation payments every 28 days.

### **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 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 age-related retirement benefits 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 in the amount of \$33,473.08, for the periods July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021, 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.

---

<sup>7</sup> 5 U.S.C. § 8102(a).

<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).

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

OWCP paid appellant FECA wage-loss compensation on the periodic rolls beginning September 1, 2007. Appellant received SSA age-related retirement benefits beginning July 1, 2007. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>11</sup> The information provided by SSA established that a portion of appellant's benefits were attributable to his federal service. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.<sup>12</sup>

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 appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rates with FERS and without FERS for specific periods July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$33,473.08.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$33,473.08 for the period July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021.

### **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>13</sup>

Recovery of an overpayment will defeat the purpose of FECA if 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.<sup>14</sup> An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>15</sup>

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial

---

<sup>11</sup> *Supra* note 9; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8129.

<sup>14</sup> 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 6.400.4a(2) (September 2020).

<sup>15</sup> *Id.* at Chapter 6.400.4.a(3); *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

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.<sup>16</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 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.<sup>17</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>18</sup>

Evidence in the case record shows that appellant received benefits of \$944.40 for an interim pension, \$500.00 for a state pension, \$1,692.00 for workers compensation benefits, \$1,266.50 from SSA, \$152.00 from the VA, and \$2,674.50 from his wife, resulting in total monthly income of \$7,229.40. He reported expenses totaling \$4,253.50 for himself and \$2,772.17 for his wife, for a total of \$7,025.67. Appellant indicated monthly expenses of \$990.00 for rent or mortgage, \$275.00 for home repairs and maintenance, \$550.00 for food for himself and \$275.00 for his wife, \$385.00 for clothing for both, \$940.00 for utilities, \$246.00 for insurance for both, \$150.17 for storage, \$462.00 for personal care and hygiene for both, \$715.00 for automobile maintenance for both, \$250.00 for a personal loan, \$880.00 for medical/dental and prescriptions for both, \$330.00 for recreation for both, \$412.50 for miscellaneous for both, and \$165 for vitamins and supplements for both. He further noted cash on hand of \$50.00, a checking account balance of \$264.00, and a savings account balance of \$400.00.

The Board finds that as his monthly income exceeds his monthly expenses by more than \$50.00, he does not need substantially all of his monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.<sup>19</sup> Therefore, OWCP properly denied waiver of recovery of the overpayment.

---

<sup>16</sup> 20 C.F.R. § 10.437(a)(b).

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

<sup>18</sup> 5 U.S.C. § 8129.

<sup>19</sup> *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides in pertinent part that, 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 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 any hardship.<sup>20</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$438.46 every 28 days from appellant's continuing compensation payments.

In determining whether appellant could repay the overpayment through \$438.46 deductions from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>21</sup> The Board finds that OWCP gave due regard to the financial information provided on the overpayment recovery questionnaire and found that his monthly income exceeded monthly expenses by more than \$50.00. There is no evidence of record to establish that OWCP erred in directing recovery of the \$33,473.08 overpayment at the rate of \$438.46 every 28 days from appellant's continuing compensation payments.<sup>22</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$33,473.08, for the periods July 1, 2007 through January 31, 2008 and December 1, 2011 through November 6, 2021, 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

---

<sup>20</sup> 20 C.F.R. § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>21</sup> *See L.F.*, Docket No. 15-0489 (issued May 11, 2015).

<sup>22</sup> *See J.A.*, Docket No. 19-1946 (issued July 13, 2020); *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).



waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$438.46 from his continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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