

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

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<b>L.E., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0294</b>
	)	<b>Issued: April 22, 2024</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, REAGAN-WASHINGTON</b>	)	
<b>NATIONAL AIRPORT, Washington, DC,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 24, 2024 appellant filed a timely appeal from a January 5, 2024 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.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,230.74, for the period July 1, 2022 through July 15, 2023, 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

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

overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$681.63 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On August 17, 2009 appellant, then a 53-year-old transportation security officer supervisor, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2009 he injured his right knee while lifting a heavy bag off an x-ray belt while in the performance of duty. He stopped work August 12, 2009. The CA-1 form indicated that appellant's retirement coverage was under the Federal Employees Retirement System (FERS).

OWCP accepted his claim for tear of the medial meniscus of right knee, chondromalacia patellae of right knee, old bucket handle tear of right medial meniscus, and unilateral primary osteoarthritis, right knee aggravation. Appellant underwent OWCP-authorized right knee arthroscopic surgery on November 3, 2009. He has not worked since December 2, 2010. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective September 26, 2009, and on the periodic compensation rolls, effective December 18, 2011.

On March 27, 2023 SSA completed a FERS/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since July 2022. The form listed his SSA age-related retirement benefit rates with and without a FERS offset. Beginning July 2022, the SSA rate with FERS was \$2,361.70 and without FERS was \$978.30; and beginning December 2022, the SSA rate with FERS was \$2,567.10 and without FERS was \$1,063.40.

On August 18, 2023 OWCP prepared a FERS offset overpayment calculation worksheet, wherein it found a total overpayment of compensation for the period July 1, 2022 through July 15, 2023 in the amount of \$18,230.74.

On October 16, 2023 OWCP prepared another FERS offset overpayment calculation worksheet, wherein it found a total overpayment of compensation for the period July 1, 2022 through July 15, 2023 in the amount of \$18,230.74. It noted that from July 1 through November 30, 2022, appellant received \$6,977.78; and from December 1, 2022 through July 15, 2023, he received \$11,252.96, for a total overpayment of compensation in the amount of \$18,230.74.

In a preliminary overpayment determination dated October 16, 2023, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$18,230.74 for the period July 1, 2022 through July 15, 2023, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. It noted that it had reduced his FECA compensation benefits effective July 16, 2023. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery 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. No response was received.

By decision dated January 5, 2024, OWCP finalized the preliminary determination, finding that appellant had received an overpayment of compensation in the amount of \$18,230.74 for the period July 1, 2022 through July 15, 2023, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as there was no evidence to support waiver. OWCP required recovery of the overpayment by deducting \$681.63 from appellant's continuing compensation payments every 28 days.<sup>2</sup>

### **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>3</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>4</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>5</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>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,230.74, for the period July 1, 2022 through July 15, 2023, 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.

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<sup>2</sup> The Board notes that, as of December 30, 2023, appellant's net FECA wage-loss compensation pay rate was \$2,726.55 every 28 days.

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>6</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 wage-loss compensation on the periodic rolls, effective December 18, 2011. Appellant received SSA age-related retirement benefits beginning July 1, 2022. As noted, a claimant cannot receive concurrent FECA wage-loss compensation benefits and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.<sup>7</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>8</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 the period beginning July 2022. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$18,230.74.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits in the amount of \$18,230.74 for the period July 1, 2022 through July 15, 2023.

### **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>9</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>10</sup> An individual is deemed to meet current

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<sup>7</sup> 20 C.F.R. § 10.421(d); *B.M.*, Docket No. 23-0891 (issued January 30, 2024); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</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).

ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>11</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 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>12</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>13</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>14</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 of recovery of the overpayment must be considered, and recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>15</sup>

In its preliminary overpayment determination, dated October 16, 2023, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and other records to support income and expenses. It advised him that it would deny waiver if he failed to furnish the requested financial information in a timely manner. Appellant did not submit a completed Form OWCP-20, nor did he otherwise submit the 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.

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<sup>11</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).

<sup>12</sup> 20 C.F.R. § 10.437(a)(b).

<sup>13</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>14</sup> *Id.* at § 10.438(b).

<sup>15</sup> *Id.* at § 10.436.

Appellant had the responsibility to provide the appropriate financial information and documentation to OWCP but failed to do so.<sup>16</sup> As appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied 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>17</sup>

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>18</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$681.63 from appellant's continuing compensation payments every 28 days.

Along with the October 16, 2023 preliminary overpayment determination, OWCP requested that appellant complete a Form OWCP-20 and submit supporting financial documentation. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP. Appellant did not respond to OWCP's request.

In setting the recovery rate at \$681.63, OWCP took into consideration the factors set forth at 20 C.F.R. § 10.441(a) in order to minimize hardship, while liquidating the debt, as appellant had not submitted documentation to assess his financial standing.<sup>19</sup> As appellant did not submit any supporting documentation, the Board finds that OWCP properly required recovery of the overpayment at the 25 percent rate of \$681.63 every 28 days.

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<sup>16</sup> 20 C.F.R. § 10.438; *B.M.*, *supra* note 7; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

<sup>17</sup> *Id.* at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>18</sup> *Supra* note 10 at Chapter 6.500.8(c)(1) (September 2020).

<sup>19</sup> *See A.V.*, Docket No. 22-1234 (issued May 4, 2023); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$18,230.74, for the period July 1, 2022 through July 15, 2023, 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 waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$681.63 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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