

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

M.T., Appellant)	
)	
and)	Docket No. 24-0303
)	Issued: April 25, 2024
U.S. POSTAL SERVICE, LITTLE ROCK POST OFFICE, Little Rock, AR, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 18, 2024 appellant filed a timely appeal from a December 28, 2023 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,595.46, for the period July 1, 2018 through November 5, 2022, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 28, 2023 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.*

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 \$2,000.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board on another issue.³ 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 25, 1996 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on January 18, 1995 he realized that his stress was due to factors of his federal employment. OWCP accepted his claim for major, recurrent major depression. Appellant retired effective April 22, 1997. A notification of personnel action (PS Form 50) dated April 22, 1997 listed his retirement plan as Federal Employees Retirement System (FERS). On January 17, 2001 appellant elected to receive compensation under FECA effective January 10, 2001.⁴

On March 26, 2019 OWCP forwarded a FERS/SSA dual benefits form to SSA.

On April 17, 2019 OWCP received a completed FERS/SSA dual benefits form wherein SSA indicated appellant's SSA age-related retirement benefit rates with FERS and without FERS from July through December 2018. Beginning July 2018, the SSA rate with FERS was \$1,1776.30 and without FERS was \$1,022.30. Beginning December 2018, the SSA rate with FERS was \$1,826.00 and without FERS was \$1,050.90.

On July 31, 2020 OWCP forwarded a FERS/SSA dual benefits form to SSA. It noted that it received FERS offset figures up to November 30, 2019 and requested figures from December 2019 through July 2020.

On August 7, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from July 1, 2018 through November 30, 2019 and computed a total overpayment amount of \$13,129.93. It determined that, during the period July 1 through November 30, 2018, he received an overpayment in the amount of \$3,803.14. During the period December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$9,326.79.

In a letter dated August 17, 2020, OWCP advised appellant that it had been determined that he had been receiving FERS/SSA dual benefits, therefore, his FECA benefits would be offset by \$715.48 every four weeks. It also advised him that this adjustment was just a preliminary amount as it had not received FERS offset figures from December 2019 to the present.

In a preliminary overpayment determination dated August 21, 2020, OWCP advised appellant that he received an overpayment of compensation in the amount of \$13,129.93 for the

³ Docket No. 04-86 (issued May 5, 2005).

⁴ The record also contains an election form dated January 18, 2001 in which appellant elected to receive compensation under FECA effective December 10, 1996.

period July 1, 2018 through July 18, 2020, because his wage-loss compensation benefits had not been reduced by his SSA age-related retirement benefits attributable to his federal service. It also made a preliminary determination 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 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, 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 prerecoumment hearing.

On August 27, 2020 OWCP forwarded a FERS/SSA dual benefits form to SSA. It noted that it received FERS offset figures up to November 30, 2019 and requested figures from December 2019 through July 2020.

On August 27, 2020 OWCP received a completed FERS/SSA dual benefits form wherein SSA noted appellant's SSA age-related retirement benefit rates with FERS and without FERS from July 2018 through December 2019. Beginning July 2018, the SSA rate with FERS was \$1,776.30 and without FERS was \$1,022.30. Beginning December 2018, the SSA rate with FERS was \$1,826.00 and without FERS was \$1,050.90. Beginning December 2019, the SSA rate with FERS was \$1,855.20 and without FERS was \$1,067.70.

On August 30, 2020 appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment. He submitted a Form OWCP-20 of even date, and reported total monthly income of \$5,140.00, total monthly expenses of \$7,530.00, and no assets.

Following a preliminary review, by decision dated February 2, 2022, OWCP's hearing representative set aside the preliminary overpayment determination finding that OWCP failed to explain how the overpayment had been calculated. The hearing representative remanded the case for further development and a *de novo* decision.

On February 10, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA. It noted that it received FERS offset figures up to November 30, 2020 and requested figures from December 2020 to the present.

On June 29, 2022 OWCP received a completed FERS/SSA dual benefits form wherein SSA noted appellant's SSA age-related retirement benefit rates with FERS and without FERS from December 2020 through December 2021. Beginning December 2020, the SSA rate with FERS was \$2,316.00 and without FERS was \$1,043.00. Beginning December 2021, the SSA rate with FERS was \$2,453.00 and without FERS was \$1,104.00.

On September 26, 2022 OWCP requested clarification from SSA regarding the FERS offset noting that the increase in the December 2020 rate appeared to be higher than the cost-of-living adjustment (COLA) for that year. It also noted that the SSA rate without FERS decreased from 2019 to 2020. OWCP requested that SSA confirm the SSA rates for 2020-2021.

On November 3, 2022 OWCP received a completed FERS/SSA dual benefits form wherein SSA calculated appellant's SSA age-related retirement benefit rates with FERS and without FERS from July 2018 through December 2021. Beginning July 2018, the SSA rate with FERS was \$1,776.30 and without FERS was \$986.40. Beginning December 2018, the SSA rate with FERS was \$1,826.00 and without FERS was \$1,014.00. Beginning December 2019, the SSA rate with FERS was \$1,855.20 and without FERS was \$1,030.20. Beginning December 2020, the SSA rate with FERS was \$1,879.30 and without FERS was \$1,043.50. Beginning December 2021, the SSA rate with FERS was \$1,990.10 and without FERS was \$1,105.00.

On June 20, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's offset overpayment from July 1, 2018 through November 5, 2022 and computed a total overpayment amount of \$21,595.46. It determined that, during the period July 1 through November 30, 2018, he received an overpayment in the amount of \$3,984.23. Beginning December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$9,770.79. Beginning December 1, 2019 through November 30, 2020, he received an overpayment in the amount of \$9,954.42. Beginning December 1, 2020 through November 30, 2021, appellant received an overpayment in the amount of \$10,057.18. Beginning December 1, 2021 through November 5, 2022, he received an overpayment in the amount of \$9,920.96. OWCP noted the total FERS offset was \$43,687.58 and deducted the previously withheld amount of \$22,092.12,⁵ resulting in a total overpayment of \$21,595.46.

In a preliminary overpayment determination dated June 27, 2023, OWCP advised appellant that he received an overpayment of compensation in the amount of \$21,595.46 for the period July 1, 2018 through November 5, 2022, because his wage-loss compensation benefits had not been reduced by his SSA age-related retirement benefits attributable to his federal service. It incorporated the overpayment worksheet which reflected how the overpayment was calculated. OWCP also made a preliminary determination that appellant was without fault in the creation of the overpayment. It requested that he 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. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, 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 July 20, 2023 appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment.

Appellant submitted a Form OWCP-20 dated July 20, 2023, listing monthly Social Security benefits of \$2,500.00, other benefits of \$3,700.00, and \$2,500.00 in FECA, resulting in total monthly income of \$8,000.00, and a checking account balance of \$50.00. He listed monthly

⁵ OWCP withheld \$715.48 from continuing compensation for the 28-day periods July 19, 2020 through September 11, 2021. It withheld \$102.21 from continuing compensation for the period September 12 to 15, 2021. From September 16 to October 9, 2021, OWCP withheld \$613.27. For the periods October 10 through December 4, 2021, it withheld \$715.48; it withheld \$757.69 from continuing compensation for the periods December 5, 2020 through January 29, 2022. OWCP withheld \$769.81 from continuing compensation for the periods January 30 through November 5, 2022. The withholding totaled \$22,092.12.

expenses for rent or mortgage of \$1,000.00, food of \$500.00, clothing of \$500.00, utilities of \$2,000.00, miscellaneous expense of \$600.00, gaming expense of \$2,000.00, an automobile payment of \$740.00, a credit card payment of \$40.00 on \$1,000.00 owed, and a bank credit card payment of \$30.00 on \$500.00 owed, resulting in total monthly expenses of \$8,150.00.

During a prereducement hearing held on November 13, 2023 appellant testified and reiterated his previously listed income and expense statements.

OWCP's records reflect that during the period December 3 to 30, 2023 appellant's net compensation benefit was \$2,715.62.

By decision dated December 28, 2023, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$21,595.46 for the period July 1, 2018 through November 5, 2022, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. He found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, explaining that his monthly income of \$8,915.62 (\$2,715.62 in FECA benefits, \$3,700.00 in Department of Veterans Affairs benefits, and \$2,500.00 in SSA benefits) exceeded his monthly expenses of \$5,350.00 by \$3,565.62. The accepted monthly expenses were \$1,000.00 for rent/mortgage, \$500.00 for food, \$500.00 for clothing, \$2,000.00 for utilities; \$600.00 for miscellaneous expenses, and \$750.00 for an automobile note. The hearing representative found the gaming debt of \$2,000.00 per month was not a necessary household expense. He also determined that \$230.00 per month of credit card debt was duplicative and could not be included in appellant's monthly expenses. Lastly, OWCP required recovery of the overpayment by deducting \$2,000.00 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.⁶ 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.⁷

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.⁸ 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

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see B.M.*, Docket No. 23-0891 (issued January 30, 2024); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefits.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,595.46, for the period July 1, 2018 through November 5, 2022, 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.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA retirement benefits attributable to federal service for the same period. The evidence of record indicates that, while appellant was receiving FECA wage-loss compensation, he was also receiving SSA age-related retirement benefits that were attributable to his federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service commencing July 1, 2018. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.⁹

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, wherein SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for the period July 1, 2018 through November 5, 2022. It provided its calculations for each relevant period based on SSA's worksheet and determined that he received an overpayment in the amount of \$43,687.58. OWCP then deducted the FERS offset previously withheld of \$22,092.12, resulting in a total remaining overpayment of \$21,595.46.

The Board has reviewed OWCP's calculations for the period July 1, 2018 through November 5, 2022 and finds that appellant received an overpayment of compensation in the amount of \$21,595.46.

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.¹¹

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

⁹ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also B.M., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 8.

¹¹ 5 U.S.C. § 8129.

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.¹² An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

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.¹⁴

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.¹⁵ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁶

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.¹⁷ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁸

In its June 27, 2023 preliminary overpayment determination, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver of recovery

¹² 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).

¹³ *Id.* at Chapter 6.400.4.a(3); *see also B.M., supra* note 8; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁴ 20 C.F.R. § 10.437(a)-(b).

¹⁵ *Id.* at § 10.438(a); *B.M., supra* note 8; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438; *D.L.*, Docket No. 20-1522 (issued July 27, 2023).

¹⁷ *Id.* at § 10.436.

¹⁸ *Id.* at § 10.438; *B.M., supra* note 8; *V.B.*, Docket No. 20-0976 (issued January 26, 2021).

if he failed to furnish the requested financial documentation within 30 days. Appellant provided a completed Form OWCP-20; however, he did not submit any financial documentation to support his reported income, assets, and expenses.

As such, appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because he has not shown, that he would experience severe financial hardship in attempting to repay the debt, 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.¹⁹ Accordingly, as he 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.²⁰

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.²¹

When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. OWCP's procedures provide that, in these instances, it 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.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$2,000.00 from appellant's continuing compensation payments every 28 days.

Appellant failed to provide requested documentation on income, expenses, and assets. As previously noted, OWCP's procedures provide that, in these instances, it should set the rate of repayment at 25 percent of the 28-day net compensation amount. OWCP's records reflect that during the period December 3 to 30, 2023 appellant's net compensation benefit was \$2,715.62. However, it did not set the recovery rate at 25 percent of this amount, which would equal \$678.91,

¹⁹ *L.E.*, Docket No. 22-0203 (issued March 17, 2023); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²⁰ *Supra* note 16.

²¹ 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).

²² *Supra* note 12 at Chapter 6.500.8c(1) (September 2020); OWCP procedures also explain that if the beneficiary is receiving periodic payments, an appropriate payment amount should be deducted in order to recover the overpayment within three years. *See* 31 C.F.R. § 901.8(b); *see also P.G.*, Docket No. 22-1073 (issued December 28, 2022).

but rather set the recovery rate at \$2,000.00. The Board, therefore, finds that OWCP abused its discretion and improperly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$2,000.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$21,595.46 for the period July 1, 2018 through November 5, 2022, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP improperly required recovery of the overpayment by deducting \$2,000.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed in part, and reversed in part.

Issued: April 25, 2024
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