

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

D.P., Appellant	)	
	)	
and	)	Docket No. 21-0187
	)	Issued: August 12, 2024
DEPARTMENT OF VETERANS AFFAIRS,	)	
EDWARD HINES, JR. VA HOSPITAL,	)	
Hines, IL, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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, 2020 appellant, through counsel, filed a timely appeal from a July 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant received a \$3,424.05 overpayment of compensation for the period September 1, 2017 through October 12, 2019, 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; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.

## **FACTUAL HISTORY**

On September 30, 2009 appellant, then a 55-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a torn left shoulder ligament when operating a wheelchair lift while in the performance of duty. His supervisor indicated on the reverse side of the claim form that appellant's retirement coverage was under the Federal Employees Retirement System (FERS). OWCP accepted the claim for upper arm and shoulder acromioclavicular sprain, cervical intervertebral disc displacement without myelopathy, aphasia, unspecified dysphagia, left shoulder region other affectations, and brachial neuritis or radiculitis. It paid appellant wage-loss compensation on the supplemental rolls commencing November 25, 2009 and on the periodic rolls commencing October 20, 2013.

On October 3, 2019 OWCP forwarded a FERS/SSA dual benefits form to SSA. SSA completed the form on October 9, 2019, reporting appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset for the period September 2017 through December 2018. Beginning September 2017, appellant's SSA rate with FERS was \$1,178.40 and without FERS was \$1,047.80. Beginning December 2017, his SSA rate with FERS was \$1,201.90 and without FERS was \$1,068.60. Beginning December 2018, appellant's SSA rate with FERS was \$1,235.60 and without FERS was \$1,098.50.

On October 24, 2019 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It explained that it had calculated the overpayment of compensation by determining the difference between his SSA amount with and without FERS for each period, and then multiplying that amount by the number of days in each period. The attached FERS offset overpayment calculation worksheet indicated an overpayment of \$391.80 for September 1 through November 30, 2017; \$1,603.99 for December 1, 2017 through November 30, 2018; and \$1,428.25 for December 1, 2018 through October 12, 2019. Utilizing these figures, OWCP calculated a total overpayment amount of \$3,424.05. It further found that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit 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, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or request a prerecoupment hearing.

In a November 7, 2019 amended preliminary overpayment determination, OWCP informed appellant that since his compensation had not been adjusted to reflect his SSA age-related retirement benefits until the periodic rolls cycle of November 10 through December 7, 2019, it therefore adjusted the overpayment amount from \$3,324.05 to \$3,550.60 and the period from September 1, 2017 through October 12, 2019 to September 1, 2017 through November 9, 2019. The attached FERS offset overpayment calculation worksheet showed an overpayment in the amount of \$391.80 for the period September 1 through November 30, 2017; \$1,603.99 for the period December 1, 2017 through November 30, 2018; and \$1,554.80 for the period December 1, 2018 through November 9, 2019. Utilizing these figures, OWCP calculated a total overpayment amount of \$3,550.60. It again found that appellant was without fault in the creation of the overpayment as he was not aware, nor could he reasonably have been aware, that OWCP had paid compensation incorrectly. OWCP requested that he complete an enclosed Form OWCP-20 and submit supporting financial documentation. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or request a precoupment hearing.

In a November 13, 2019 letter, OWCP advised appellant that he had been receiving a prohibited dual benefit. It noted that SSA had confirmed that a portion of his SSA age-related retirement benefits were attributed to his years of federal service as an employee under the FERS retirement program and that portion required an offset of his FECA compensation benefits, in the amount of \$126.55 every 28 days, or \$137.01 every month. OWCP indicated that, to account for appellant's SSA offset, his FECA wage-loss compensation would be adjusted to reflect a new net compensation amount of \$2,472.01 every 28 days.

On an overpayment action request form dated November 14, 2019, appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review regarding the issues of fact of overpayment and possible waiver of recovery of the overpayment.

A precoupment hearing was held on March 13, 2020. Counsel noted that appellant received approximately \$3,000.00 monthly in FECA benefits and approximately \$700.00 in SSA age-related retirement benefits. He asserted that as appellant did not turn 65 until September 26, 2018, he may not have received retirement benefits during the entire period of the overpayment. The hearing representative held the record open for 30 days for appellant to submit additional financial information. She advised him to complete the documents as thoroughly as possible. No further evidence regarding the overpayment was received.

By decision dated April 28, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019, because it failed to offset his compensation payments by the portion of his SSA age-related benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation because he failed to submit a completed Form OWCP-20 or otherwise provide the necessary financial information and supporting documentation. OWCP's hearing representative required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

On July 27, 2020 OWCP reissued the April 28, 2020 decision due to technical error regarding the interest on the debt.

**LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) 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 his or her federal employment.<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 that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>5</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>6</sup>

**ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019, 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 information provided by SSA indicated that a portion of his SSA age-related retirement benefits were attributable to his federal service. As OWCP neglected to offset appellant's FECA benefits for the period September 1, 2017 through October 12, 2019, he received an overpayment of wage-loss compensation.<sup>7</sup> While counsel alleged during an OWCP hearing that appellant may not have received SSA retirement benefits during this entire time period, he did not submit any evidence to substantiate his allegation. OWCP properly relied on the evidence received from SSA which indicated that appellant was in receipt of age-related retirement benefits during the time period at issue. As noted, a claimant cannot concurrently receive wage-loss compensation and

---

<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 B.G.*, Docket No. 20-0541 (issued April 28, 2021); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also P.N.*, Docket No. 20-1159 (issued April 20, 2021); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *Id.*

SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.<sup>8</sup> Consequently, the fact of overpayment has been established.

OWCP initially, in an October 24, 2019 preliminary overpayment determination, calculated the overpayment for the period September 1, 2017 through October 12, 2019 in the amount of \$3,424.05. In an amended November 7, 2019 preliminary overpayment determination, it noted that appellant's compensation had not been adjusted to reflect his SSA age-related retirement benefits until the periodic rolls cycle of November 10 through December 7, 2019. Thus, OWCP recalculated the period of the award to September 1, 2017 through November 9, 2019 and to its calculations of the amount that it should have offset for each relevant period based on the SSA worksheet and determined that he received an overpayment in the amount of \$3,550.60.

By decision dated April 28, 2020, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019, because it failed to offset his compensation payments by the portion of his SSA age-related benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation because he failed to provide completed Form OWCP-20 and provide supporting financial documentation. OWCP's hearing representative concluded that there was no evidence to substantiate that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. The hearing representative indicated that the overpayment would be recovered by withholding \$200.00 from his continuing compensation payments every 28 days. On July 27, 2020 OWCP set aside the April 28, 2020 decision and reissued the decision due to technical error regarding the interest on the debt.

In the decision on appeal dated July 27, 2020, OWCP finalized its preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019, because it failed to offset his compensation payments by the portion of his SSA age-related benefits that were attributable to his federal service.<sup>9</sup>

The Board has reviewed OWCP's calculations and finds that appellant received prohibited dual benefits for the period September 1, 2017 through October 12, 2019 totaling \$3,424.05.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or

---

<sup>8</sup> *Supra* note 6; *B.G., supra* note 5; *L.M.*, Docket No. 19-1197 (issued January 8, 2020); *V.B.*, Docket No. 19-1082 (issued October 29, 2019).

<sup>9</sup> OWCP has not issued a final decision regarding the remaining period of overpayment, from October 13 to November 9, 2019.

<sup>10</sup> This amount is based on totaling the amounts noted by OWCP ( $\$391.80 + \$1,603.99 + \$1,428.25 = \$3,424.04$ ).

recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>12</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>13</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>14</sup>

OWCP's regulations provide 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>15</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>16</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$3,424.05 overpayment of compensation.<sup>17</sup>

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

---

<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see B.G., supra* note 5; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>12</sup> *B.G., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</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>14</sup> *Id.* at § 10.437(a)(b).

<sup>15</sup> *Id.* at § 10.438(a); *P.N.*, *supra* note 6; *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>16</sup> *Id.* at 10.438(b).

<sup>17</sup> *B.G., supra* note 5; *A.C., supra* note 12.

would defeat the purpose of FECA or be against equity and good conscience.<sup>18</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>19</sup>

In its initial preliminary determination dated October 13, 2019 and amended preliminary determination dated November 7, 2019, OWCP explained the importance of providing the completed Form OWCP-20 and supporting financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or otherwise provide financial information or documentation regarding his income and expenses.<sup>20</sup> As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>21</sup> The Board thus finds that OWCP properly denied waiver of recovery of the overpayment.<sup>22</sup>

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

Section 10.441 of OWCP's regulations<sup>23</sup> provides 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 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>24</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing compensation payments.<sup>25</sup>

OWCP provided appellant a Form OWCP-20 with its October 24, 2019 preliminary overpayment determination and advised him to submit supporting financial documentation with his completed form.<sup>26</sup> Appellant did not complete the Form OWCP-20 or otherwise provide the

---

<sup>18</sup> 20 C.F.R. § 10.436.

<sup>19</sup> *Id.* at § 10.438; *see B.G., supra* note 5; *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>20</sup> *B.G., id.*; *R.M.*, Docket No. 19-1570 (issued June 1, 2020).

<sup>21</sup> *B.G., id.*; *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>22</sup> 20 C.F.R. § 10.438; *see B.G., id.*; *L.D.*, Docket No. 19-0606 (issued November 21, 2019).

<sup>23</sup> *Id.* at § 10.441.

<sup>24</sup> *Id.*, *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>25</sup> *B.G., supra* note 5; *L.D.*, Docket No. 19-1423 (issued March 2, 2020).

<sup>26</sup> 20 C.F.R. § 10.438.

necessary financial information to report his income and expenses. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>27</sup> When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>28</sup> As appellant did not submit the necessary financial information to OWCP as requested, the Board finds that OWCP properly required recovery of the \$3,424.05 overpayment at the rate of \$200.00 every 28 days from his continuing compensation payments.<sup>29</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$3,424.05 for the period September 1, 2017 through October 12, 2019, 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 and properly required recovery of the overpayment by deducting \$200.00 every 28 days from his continuing compensation payments.

---

<sup>27</sup> *Id.* at § 10.438(a); *see P.N., supra* note 6; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>28</sup> *See P.N., id.*; *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 13 at Chapter 6.400.3 (September 2020).

<sup>29</sup> *See P.N., id.*; *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).



**ORDER**

**IT IS HEREBY ORDERED THAT** July 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2024  
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