

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

B.C., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL AIR)
STATION PATUXENT RIVER,)
Patuxent River, MD, Employer)
-----)

Docket No. 24-0561
Issued: December 13, 2024

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 May 5, 2024 appellant filed a timely appeal from a November 16, 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 \$30,142.18, for the period June 1, 2015 through March 30, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 16, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord 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.*

without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$1,763.00 from appellant's compensation payments every 28 days; and (4) whether OWCP properly found that appellant abandoned his request for a prerecoupment hearing.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 17, 2000 appellant, then a 46-year-old systems accountant, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2000 he sustained a neck injury due to slipping and falling at a bowling alley when he was on travel duty status while in the performance of duty. His retirement system coverage was noted as Federal Employees' Retirement System (FERS). Appellant stopped work on March 6, 2000. OWCP accepted appellant's claim for aggravation of cervical stenosis with myelopathy, Brown-Sequard syndrome of the cervical spine, and myelomalacia of the cervical spine. It paid him wage-loss compensation for disability from work on the periodic rolls, effective June 16, 2002.

In a form signed on February 6, 2013 appellant elected to receive FECA compensation instead of FERS retirement benefits.

On April 23, 2019 OWCP prepared a FERS offset overpayment calculation worksheet, which listed appellant's SSA age-related retirement benefit rates with and without a FERS offset from June 1, 2015 through March 30, 2019.

In a preliminary overpayment determination dated May 6, 2019 OWCP advised appellant that he received an overpayment of compensation in the amount of \$32,593.09 for the period June 1, 2015 through March 30, 2019, because appellant received SSA age-related retirement benefits attributable to his federal service, without an appropriate offset, while he received FECA compensation benefits. It also determined 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 recovery 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 which supported his 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 prerecoupment hearing.

Appellant submitted an overpayment action request form, signed on May 13, 2019, in which he requested waiver of recovery of the overpayment and requested that OWCP render a final overpayment decision based on the written evidence of record. He also submitted a

³ Docket No. 05-0232 (issued September 2, 2005); Docket No. 09-1928 (issued January 14, 2010); *petition for recon. denied*, Docket No. 09-1928 (issued July 9, 2010); Docket No. 13-0128 (issued June 13, 2013); Docket No. 16-0971 (issued July 25, 2016); Docket No. 20-0669 (issued December 16, 2021); Docket No. 21-1327 (issued January 31, 2023).

partially-completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation.

By decision dated November 25, 2019, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$32,183.24, for the period June 1, 2015 through March 1, 2019, because he concurrently received SSA age-related retirement benefits attributable to his federal service, without an appropriate offset.

Appellant appealed to the Board. By decision dated December 16, 2021,⁴ the Board affirmed OWCP's November 25, 2019 decision in part, finding that OWCP had properly determined that he received an overpayment of compensation because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board, however, also set aside the November 25, 2019 decision in part and remanded the case for OWCP to obtain clarification from SSA regarding appellant's exact age-related retirement benefit rates and their proper periods. The Board further directed OWCP to determine the proper period(s) and amount of overpayment of compensation and issue a new preliminary overpayment determination with an overpayment action request form, a new Form OWCP-20, and instructions for providing supporting financial documentation.

On remand, OWCP requested appellant's age-related retirement benefits information from SSA. On June 28, 2022, OWCP received a FERS/SSA dual benefits form completed by SSA, which indicated that appellant received SSA age-related retirement benefits that were attributable to federal service commencing June 2015. SSA provided appellant's age-related retirement benefit rates with and without a FERS offset as follows: beginning June 2015, the SSA rate with FERS was \$2,114.00 and without FERS was \$1,467.70; beginning December 2015, the SSA rate with FERS was \$2,114.00 and without FERS was \$1,467.70; beginning December 2016 the SSA rate with FERS was \$2,120.30 and without FERS was \$1,472.10; beginning December 2017 the SSA rate with FERS was \$2,162.70 and without FERS was \$1,501.50; beginning December 2018 the SSA rate with FERS was \$2,223.20 and without FERS was \$1,543.50; beginning December 2019 the SSA rate with FERS was \$2,258.70 and without FERS was \$1,568.10; beginning December 2020 the SSA rate with FERS was \$2,288.00 and without FERS was \$1,588.40; and beginning December 2021 the SSA rate with FERS was \$2,422.90 and without FERS was \$1,682.10.

In a preliminary overpayment determination dated September 13, 2022 OWCP advised appellant that he received an overpayment of compensation in the amount of \$30,142.18 for the period June 1, 2015 through March 30, 2019, because he concurrently received FECA wage-loss compensation an SSA age-related retirement benefits, without an appropriate offset. It further determined 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 recovery 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 which supported his income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within

⁴ Docket No. 20-0669 (issued December 16, 2021).

30 days of the date of the letter, he could request a final decision based on the written evidence, or a precoupment hearing.

On October 4, 2022, OWCP received in the Employees' Compensation and Management Portal (ECOMP) appellant's request for a precoupment hearing. Appellant disagreed with the fact and amount of the overpayment, and requested waiver of recovery.

By decision dated January 5, 2023, OWCP's hearing representative set aside the September 13, 2022 preliminary overpayment determination, finding that OWCP had not sufficiently explained its calculation of the amount of the overpayment, as it had over deducted the FERS offset amount from March 31, 2019 through June 18, 2022, but used an incorrect amount to calculate the FERS offset amount effective December 1, 2021. On April 27, 2023, OWCP prepared a FERS offset overpayment calculation worksheet, based on the benefit rates provided by SSA, wherein it noted the calculations of appellant's overpayment from June 1, 2015 through March 30, 2019. It determined that: for the period June 1 through November 30, 2015 appellant received an overpayment of \$3,899.08; for the period December 1, 2015 through November 30, 2016 appellant received an overpayment of \$7,798.15; for the period December 1, 2016 through November 30, 2017 appellant received an overpayment of \$7,799.79; for the period December 1, 2017 through November 30, 2018 appellant received an overpayment of \$7,956.22; and for the period December 1, 2018 through March 30, 2019 appellant received an overpayment of \$2,688.94. The total overpayment was determined to be \$30,142.18.

In a preliminary overpayment determination dated May 2, 2023, OWCP advised appellant that he received an overpayment of compensation in the amount of \$30,142.18, for the period June 1, 2015 through March 30, 2019, because he concurrently received SSA age-related retirement benefits attributable to his federal service and FECA wage-loss compensation, without an appropriate offset. It further advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit an updated Form OWCP-20 to determine a reasonable rate of recovery, 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 other records in order to support income and expenses. Additionally, OWCP provided an overpayment action request form and 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 May 5, 2023, appellant requested, in an overpayment action request form, a precoupment hearing before a representative of OWCP's Branch of Hearings and Review. In an attached May 5, 2023 memorandum, he alleged that he would not have applied for a loan or purchased a new home if he had known he would have had to pay back an overpayment debt. Appellant submitted documentation regarding his mortgage.

On September 25, 2023, OWCP's hearing representative notified appellant of the precoupment hearing scheduled for October 30, 2023 at 2:15 p.m. Eastern Standard Time (EST). She mailed the notice to appellant's last known address of record and provided the information needed to access the hearing. In a separate letter of even date, OWCP again requested that appellant complete and return a Form OWCP-20 regarding current monthly income, monthly expenses, and assets.

On October 1, 2023, OWCP received a partially-completed Form OWCP-20, an attached memorandum, and illegible copies of documentation concerning his mortgage. The Form OWCP-20 contained the statement, “Sold previous home and property to pay off loan used to buy current home.” The portion of the Form OWCP-20 for listing monthly income, monthly expenses, or assets contained the notation, “N/A – See Attachment 1.” No updated financial information regarding monthly income, monthly expenses, or assets was included.

Appellant neither appeared for the hearing on October 30, 2023, nor requested postponement.

By decision dated November 16, 2023, OWCP’s hearing representative finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$30,142.18, for the period June 1, 2015 through March 30, 2019, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery because appellant did not show that recovery would defeat the purpose of FECA. OWCP required recovery of the overpayment by deducting \$1,763.00 from appellant’s continuing compensation payments every 28 days. It also found that appellant abandoned his request for a precoupment hearing.

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.⁵ 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.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$30,142.18, for the period June 1, 2015 through March 30, 2019, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116.

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

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

The Board previously found, in its December 16, 2021 decision, that OWCP had properly determined that appellant received an overpayment of compensation, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.⁹ Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹⁰ The Board, however, remanded the case for OWCP to determine the proper period and amount of the overpayment.¹¹

On remand, OWCP recalculated the period and amount of the overpayment. It correctly determined that the information provided by SSA established that the overpayment pertained to the period June 1, 2015 through March 30, 2019. Consequently, the Board finds that the period of the overpayment has been established.¹²

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 a dual benefits calculation form from SSA with respect to appellant's SSA age-related retirement benefits attributable to federal service. Based upon this information, OWCP created a FERS offset overpayment calculation worksheet calculating a total overpayment amount. It provided appellant's age-related retirement benefit rates with FERS and without FERS for specific periods from June 1, 2015 through March 30, 2019. OWCP properly calculated the overpayment amount for each relevant period based on SSA's dual benefits form. It explained its calculations for each relevant period and determined that appellant received an overpayment of compensation in the amount of \$30,142.18.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period June 1, 2015 through March 30, 2019 and finds that he received an overpayment of compensation in the amount of \$30,142.18.¹³

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.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

⁹ Docket No. 20-0669 (issued December 16, 2021).

¹⁰ See *C.G.*, 23-1074 (issued February 27, 2024); *M.J.*, Docket No. 20-1565 (issued January 24, 2023); *B.D.*, Docket No. 20-1365 (issued December 21, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹¹ *Supra* note 9.

¹² See *K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹³ See *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹⁴ 5 U.S.C. § 8129.

overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁵

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.¹⁶ Appellant, however, had the responsibility to provide supporting financial information and documentation to OWCP.¹⁷

In its preliminary overpayment determination dated May 2, 2023, OWCP requested a completed overpayment recovery questionnaire and supporting financial documentation regarding monthly income, monthly expenses and assets, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, expenses, and assets. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not submit an updated Form OWCP-20. The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁰ Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made

¹⁵ 20 C.F.R. § 10.438.

¹⁶ *Id.* at § 10.436.

¹⁷ *Supra* note 13.

¹⁸ *Supra* note 12. Appellant claimed waiver of the overpayment based on detrimental reliance, alleging that he would not have applied for a loan or purchased a new home if he had known he would have to pay back an overpayment debt. As noted, failure to submit the requested information about income, expenses, and assets within 30 days of the request shall result in denial of waiver.

¹⁹ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

²⁰ *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

by decreasing subsequent 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 financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required repayment of the overpayment by deducting \$1,763.00 from appellant’s continuing compensation payments every 28 days.

While appellant requested waiver of recovery of the overpayment, he did not provide adequate supporting financial information. OWCP’s regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁴

Appellant’s 28-day net compensation amount at the time of OWCP’s November 16, 2023 final overpayment determination was \$7,055.89. The Board notes that the repayment amount of \$1,763.00 is not greater than 25 percent of \$7,055.89. The Board therefore finds that OWCP reasonably required recovery of the overpayment by deducting \$1,763.00 every 28 days from appellant’s continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 4

A claimant dissatisfied with a decision on his or her claim is entitled, upon timely request, to a hearing before an OWCP representative.²⁵ Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time, place, and method of the oral hearing to the claimant and to any representative at least 30 days before the scheduled hearing date.²⁶

A hearing before OWCP’s Branch of Hearings and Review can be considered abandoned only under very limited circumstances.²⁷ With respect to abandonment of hearing requests,

²¹ 20 C.F.R. § 10.441; *see A.F.*, Docket No. 19-0054 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²² *See A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²³ *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.8c(1) (September 2018); *D.H.*, Docket No. 20-1064 (issued December 14, 2020); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²⁴ 20 C.F.R. § 10.438. *See also F.B.*, Docket No. 21-0680 (issued February 23, 2022).

²⁵ 5 U.S.C. § 8124(b).

²⁶ 20 C.F.R. § 10.617(b).

²⁷ *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *Claudia J. Whitten*, 52 ECAB 483 (2001).

Chapter 2.1601.6(g) of OWCP's procedures²⁸ and section 10.622(f) of its regulations²⁹ provide in relevant part that failure of the claimant to appear at the scheduled hearing, failure to request a postponement, and failure to request in writing within 10 days after the date set for the hearing that another hearing be scheduled shall constitute abandonment of the request for a hearing. Under these circumstances, the Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district office.³⁰

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing.

OWCP's Branch of Hearings and Review received appellant's request for a prerecoupment hearing in ECOMP on May 5, 2023. In a September 25, 2023 letter, OWCP's hearing representative provided appellant written notice of the hearing, which was scheduled for October 30, 2023 at 2:15 p.m. EST. She mailed the September 25, 2023 notice of hearing to appellant's last known address of record, and it was not returned as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.³¹ The presumption is commonly referred to as the "mailbox rule."³² It arises when the record reflects that the notice was properly addressed and duly mailed.³³ The current record is devoid of evidence to rebut the presumption that appellant received OWCP's September 25, 2023 notice of hearing.

Appellant did not call-in for the October 30, 2023 hearing, nor is there any indication that he requested postponement of the telephonic hearing.³⁴ Moreover, he did not submit a written request within 10 days to reschedule the hearing. The Board, therefore, finds that OWCP properly determined that appellant abandoned his request for a prerecoupment hearing.³⁵

CONCLUSION

The Boards finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$30,142.18, for the period June 1, 2015 through March 30, 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

²⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020).

²⁹ 20 C.F.R. § 10.622(f).

³⁰ *Id.*

³¹ *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

³² *Id.*

³³ *Id.*

³⁴ *See* 20 C.F.R. § 10.622(c).

³⁵ *A.R.*, Docket No. 21-1000 (issued March 25, 2022); *M.V.*, Docket No. 17-1795 (issued March 1, 2018).

Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$1,763.00 from appellant's compensation payments every 28 days. The Board also finds that OWCP properly found that appellant abandoned his request for a preresoupment hearing.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 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