

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

D.H., Appellant)	
)	
and)	
)	
DEPARTMENT OF JUSTICE, FEDERAL)	Docket No. 25-0091
BUREAU OF PRISONS, METROPOLITAN)	Issued: December 12, 2024
DETENTION CENTER, Brooklyn, NY,)	
Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 6, 2024 appellant, through counsel, filed a timely appeal from an October 28, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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 an 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,436.53, for the period March 1, 2023 through May 18, 2024, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation, 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 \$700.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 7, 2001, appellant, then a 45-year-old cook supervisor, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left shoulder injury when an assaultive inmate he was helping to restrain kicked him in the left shoulder while in the performance of duty. He stopped work on August 8, 2021. OWCP accepted the claim for left shoulder trauma. It subsequently expanded the acceptance of appellant's claim to include the additional conditions of subluxation of the cervical spine at C1, C5-6, and C6-7, bilateral carpal tunnel syndrome, brachial neuritis, disorder of the bursae and tendons in the left shoulder region, and post-traumatic stress disorder (PTSD). Appellant remained off work. OWCP paid him wage-loss compensation on supplemental rolls, effective September 22, 2001, and on the periodic rolls, effective December 2, 2001.

The record reveals that appellant's retirement coverage is under the Federal Employees Retirement System (FERS).

On September 8, 2023, OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without FERS. No response was received. OWCP sent a second dual benefits form to SSA on April 23, 2024.

On May 1, 2024, SSA completed the FERS/SSA dual benefits form, which reported that appellant had received SSA benefits based on age commencing March 2023. The form reported his SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning March 2023, the SSA rate with FERS was \$1,797.00 and without FERS \$84.10. Beginning December 2023, the SSA rate with FERS was \$1,854.50 and without FERS \$86.70.

In a FERS offset overpayment calculation worksheet dated July 17, 2024, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period March 1 through November 30, 2023, appellant received an overpayment in the amount of \$15,529.05; and for the period December 1, 2023 through May 18, 2024, he received an overpayment of \$9,907.48. OWCP added the two amounts to calculate a total overpayment of \$25,436.53.

By letter dated July 5, 2024, OWCP advised appellant that, effective May 19, 2024, his FECA wage-loss compensation benefits would be offset by his SSA age-related retirement benefits, every 28 days, in the amount of \$1,631.82. Appellant's new net wage-loss compensation payment every 28 days would be \$3,396.34. Effective May 19, 2024, OWCP offset his FECA

wage-loss compensation benefits by his SSA age-related retirement benefits. Appellant's new net wage-loss compensation payment every 28 days would be changed to \$3,396.34.

In a July 30, 2024 preliminary overpayment determination, OWCP advised appellant that he had received an overpayment in the amount of \$25,436.53, for the period March 1, 2023 through May 18, 2024, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further determined that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, it 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 August 27, 2024, appellant, through counsel, requested waiver of recovery of the overpayment, and requested that OWCP issue a decision based on the written evidence. He contended that recovery of the overpayment would cause severe financial hardship as he had limited funds available for repayment and would be unable to meet his fixed monthly expenses. Appellant attached a completed Form OWCP-20 and supporting documentation. He reported total monthly income of \$11,315.00, total monthly expenses of \$9,572.85, and total assets of \$168,214.00.

By decision dated October 28, 2024, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$25,436.53, for the period March 1, 2023 through May 18, 2024, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It explained that, during the 275 days between March 1 and November 30, 2023, he had received an overpayment of \$15,529.05, and during the 170 days between December 1, 2023 and May 18, 2024, he had received an overpayment of \$9,907.48. OWCP found that appellant was without fault in the creation of the overpayment but, denied waiver of recovery. It required recovery of the overpayment by deducting \$700.00 from his 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 of an employee resulting from personal injury sustained while in the performance of his or her federal employment.³ 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.⁴

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

federal service of the employee.⁵ 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 benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA wage-loss compensation and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,436.53, for the period March 1, 2023 through May 18, 2024, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

OWCP paid appellant FECA wage-loss compensation on the periodic rolls, effective December 2, 2001. The case record establishes that appellant received SSA age-related retirement benefits under FERS beginning March 1, 2023. 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.⁷ The information provided by SSA established that a portion of appellant's retirement benefits were attributable to his federal service. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.

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. SSA provided appellant's SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing March 2023. In its July 30, 2024 preliminary overpayment determination, OWCP calculated the amounts of overpayment by determining the difference between the SSA rate with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$25,436.53.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 1, 2023 through May 18, 2024, and finds that an overpayment of compensation in the amount of \$25,436.53 was created.

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 recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸

⁵ 20 C.F.R. § 10.421(d).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁷ *P.B.*, Docket No. 23-0955 (issued March 13, 2024); *see E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

⁸ 5 U.S.C. § 8129(a)-(b).

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.⁹

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.¹⁰ 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.¹¹

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.¹²

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 recovery of the overpayment would defeat the purpose of FECA, or be against equity and good conscience.¹³ In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses, and that his assets do not exceed the established limit as determined by OWCP procedures.¹⁴

On the Form OWCP-20, appellant reported total assets of \$168,214.00. As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for

⁹ A.C., Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ *Supra* note 5 at § 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).

¹¹ *Id.* at § 10.437(a)(b).

¹² *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹³ 5 U.S.C. § 8129.

¹⁴ *Supra* note 5 at § 10.436.

an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent.¹⁵ Because appellant's assets exceed the allowable resource base, the Board finds that appellant has not established that waiver of recovery would defeat the purpose of FECA.¹⁶ Accordingly, it is not necessary for OWCP to consider whether he needs substantially all of his current income to meet ordinary and necessary living expenses.¹⁷

The Board also finds that appellant has not established that he was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. Appellant has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that he has relinquished a valuable right or changed his position for the worse in reliance on the payments which created the overpayment.¹⁸

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA, or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹⁹

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.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$700.00 from appellant's continuing compensation payments every 28 days.

In requiring recovery, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for

¹⁵ *Supra* note 11.

¹⁶ *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

¹⁷ *See J.R.*, Docket No. 24-0852 (issued November 14, 2024); *S.R.*, Docket No. 20-1416 (issued September 8, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

¹⁸ *See B.C.*, Docket No. 19-0629 (issued June 2, 2020); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁹ *S.W.*, *supra* note 16.

²⁰ *Supra* note 5 at § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

more than ordinary needs.²¹ Thus, it did not abuse its discretion in setting the rate of recovery.²² The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$700.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,436.53, for the period March 1, 2023 through May 18, 2024, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, 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 \$700.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

²¹ *A.N.*, Docket No. 23-0983 (issued January 10, 2024); *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

²² *A.N.*, *id.*; *P.S.*, *id.*; *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).