

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

A.G., Appellant)	
)	
and)	Docket No. 24-0592
)	Issued: July 10, 2024
U.S. POSTAL SERVICE, NIMITZ STATION,)	
San Antonio, TX, 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 May 8, 2024 appellant filed a timely appeal from an April 15, 2024 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 \$14,822.67 for the period May 6, 2022 through October 28, 2023, for which he was without fault, because he concurrently received FECA wage-

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 15, 2024 decision, OWCP received additional evidence. 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.*

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 directed recovery of the overpayment in full.

FACTUAL HISTORY

On June 8, 2009 appellant, then a 56-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that he developed left knee pain due to factors of his federal employment, including delivering mail while walking on an incline. He noted that he first became aware of his condition and realized its relationship to his federal employment on June 2, 2009. OWCP accepted the claim for tear of medial meniscus left knee. Appellant underwent surgeries to his left knee on November 20, 2009, and August 9 and September 21, 2016. After each surgery, OWCP paid him wage-loss compensation. It thereafter paid appellant wage-loss compensation for total disability on the periodic rolls, effective May 6, 2022, and for partial disability on the supplemental rolls, effective April 23, 2023, following his return to work in a modified-duty city carrier position.

On January 9, 2023 OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On January 29, 2023 SSA forwarded a completed FERS/SSA dual benefits calculation for appellant to OWCP. The form indicated that beginning in November 2020 appellant's SSA rate with FERS was \$1,510.80 and without FERS was \$701.40. Beginning December 2020, the SSA rate with FERS was \$1,530.40 and without FERS was \$710.50. Beginning January 2021, the SSA rate with FERS was \$1,681.50 and without FERS was \$754.90. Beginning December 2021, the SSA rate with FERS was \$1,780.60 and without FERS was \$799.30. Beginning January 2022, the SSA rate with FERS was \$1,837.90 and without FERS was \$799.30. Beginning December 2022, the SSA rate with FERS was \$1,997.70 and without FERS was \$868.80.

In a February 28, 2023 letter, OWCP notified appellant that his compensation would be offset by the portion of his SSA age-related retirement benefits attributable to his federal service.

A November 29, 2023 FERS offset overpayment calculation worksheet generated the amount that OWCP should have offset each 28-day compensation period from May 6, 2022 through October 28, 2023. OWCP noted that it had applied the offset for the period February 26 through April 24, 2023, but had not applied the offset for the periods May 6, 2022 through February 25, 2023, or April 25 through October 28, 2023. It found that, from May 6 through November 30, 2022, appellant received an overpayment of \$7,156.09; from December 1, 2022 through February 25, 2023, he received an overpayment of \$3,237.83; from April 25 through May 16, 2023, he received an overpayment of \$595.46; from May 17 through 21, 2023, he received an overpayment of \$111.65; from May 22 through 25, 2023, he received an overpayment of \$148.87; from May 30 through June 3, 2023, he received an overpayment of \$186.08; from June 5 through 11, 2023, he received an overpayment of \$186.08; from June 12 through 24, 2023, he received an overpayment of \$334.95; from June 26 through July 6, 2023, he received an overpayment of \$297.73; from July 10 through August 17, 2023, he received an overpayment of \$1,116.49; from August 21 through September 2, 2023, he received an overpayment of \$409.38; from September 6 through 23, 2023, he received an overpayment of \$521.03; from September 25

through 28, 2023, he received an overpayment of \$148.87; and from October 16 through 28, 2023, he received an overpayment of \$372.16. OWCP added these overpayment amounts for each period to find a total overpayment of \$14,822.67.

In a preliminary overpayment determination dated November 29, 2023, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$14,822.67 for the period May 6, 2022 through October 28, 2023, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It advised him of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, OWCP notified appellant that he could request a final decision based on the written evidence, or a precoupment hearing. It allotted 30 days for him to respond.

In a December 14, 2023 overpayment action request form, postmarked December 16, 2023, appellant requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review and also requested waiver of recovery of the overpayment.

Following a preliminary review, by decision dated February 5, 2024, OWCP's hearing representative set aside the preliminary overpayment determination finding that OWCP failed to explain how the overpayment had been calculated, with citation to specific statutes, regulations, or published policy, which authorized OWCP to offset appellant's compensation. The hearing representative remanded the case for further development and a *de novo* decision.

In a revised preliminary overpayment determination dated February 9, 2024, OWCP advised appellant that he received an overpayment of compensation in the amount of \$14,822.67 during the period May 6, 2022 through October 28, 2023 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It cited the appropriate statutory and regulatory authority and advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an overpayment action request form and Form OWCP-20 and submit supporting financial documentation. It noted that he could request a final decision based on the written evidence or a precoupment hearing and allotted 30 days for him to respond.

In a Form OWCP-20 completed on April 2, 2024, appellant reported a total monthly income of \$5,619.00, which included \$2,085.00 in SSA benefits, \$2,000.00 in pension benefits, and \$1,534.00 of other unnamed income. He noted total monthly expenses of \$5,130.00 for rent or mortgage, food, clothing, utilities, and credit card payments. Appellant reported that he had cash on hand of \$200.00, a checking account balance of \$3,266.00, and a savings account balance of \$30,000.00.

In an overpayment action request form postmarked April 3, 2024, appellant requested a decision based on the written evidence and also requested waiver of recovery of the overpayment.

OWCP, by decision dated April 15, 2024, finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of

\$14,822.67 for the period May 6, 2022 through October 28, 2023 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It found him without fault in the creation of the overpayment but denied waiver of recovery of the overpayment because the evidence of record did not establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment in full within 30 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.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 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 the employee's federal service.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 benefits and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$14,822.67 for the period May 6, 2022 through October 28, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

In its April 15, 2024 decision, OWCP found that an overpayment of compensation was created for the period May 6, 2022 through October 28, 2023. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. As noted, a claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service for the period May 6, 2022 through October 28, 2023. OWCP, however, neglected to offset his FECA benefits for the periods May 6, 2022 through February 25,

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ 20 C.F.R. § 10.421(d); *L.D.*, Docket No. 21-0447 (issued September 28, 2021); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, *supra* note 5.

2023 and April 25 through October 28, 2023. Accordingly, the Board finds that it properly determined that appellant received an overpayment of wage-loss compensation during the period May 6, 2022 through October 28, 2023.

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS and without FERS for specific periods commencing November 2020. OWCP set forth its calculations of the amount that should have been offset during each relevant period based on the information provided by SSA and determined that appellant received an overpayment in the amount of \$14,822.67. The Board has reviewed OWCP's calculation of benefits received by appellant for the period May 6, 2022 through October 28, 2023 and finds that an overpayment of compensation in the amount of \$14,822.67 was created.⁸

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.⁹ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁰

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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.¹¹ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹² Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹³ An individual's liquid assets include, but are not limited to cash, the value of stocks,

⁸ See *M.D.*, Docket No. 21-0725 (issued January 25, 2023); *W.C.*, Docket No. 20-1241 (issued February 9, 2021).

⁹ 5 U.S.C. § 8129(a)-(b).

¹⁰ *L.A.*, Docket No. 22-1383 (issued June 14, 2023); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

¹¹ 20 C.F.R. § 10.436(a)(b).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹³ *Id.* at Chapter 6.400.4a(2).

bonds, saving accounts, mutual funds, and certificate of deposits.¹⁴ Non liquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁵

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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁶ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

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.¹⁸

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because he has not shown that he needs substantially all of his current income to meet ordinary and necessary living expenses. As his monthly income of \$5,619.00 exceeds his monthly expenses of \$5,130.00 by more than \$50.00, in this case \$489.00, he has not shown that he needs substantially all of his current income to meet current ordinary and necessary living expenses.¹⁹ Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test based on his assets.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a

¹⁴ *Id.* at Chapter 6.400.4b(3).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁶ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁷ *Supra* note 12 at Chapter 6.400.4c(3).

¹⁸ 20 C.F.R. § 10.436.

¹⁹ *Id.* at § 10.437(a), (b).

valuable right or changed his position for the worse in reliance on the payment which created the overpayment.²⁰

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, he has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$14,822.67 overpayment.

LEGAL PRECEDENT -- ISSUE 3

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 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 facts, so as to minimize any hardship.²¹

OWCP procedures provide that recovery of an overpayment can also be made against ongoing compensation in a single deduction if a sufficiently large lump-sum payment of compensation is payable to the overpaid individual for a single period of past entitlement or for a schedule award.²²

ANALYSIS -- ISSUE 3

The Board finds that the case is not in posture for a decision with regard to recovery of the \$14,822.67 overpayment.

In this case, appellant is receiving ongoing wage-loss compensation for partial disability based upon his accepted June 2, 2009 employment injuries, for which he was placed on the supplemental rolls, effective April 23, 2023. In the April 15, 2024 final overpayment decision, OWCP requested that he repay the overpaid amount of compensation in full. However, it failed to provide appellant with the additional appropriate recovery method of deduction of installment payments from periodic compensation in accordance with its procedures. Appellant is receiving continuing compensation for partial disability, and the record does not indicate that there is any accrued compensation owed him against which an offset might otherwise be appropriate. Therefore, recovery of the overpayment must be made by decreasing subsequent payments of compensation. Neither FECA, nor its implementing regulations make any provision for a

²⁰ *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²¹ 20 C.F.R. § 10.441(a). *See also L.B.*, Docket No. 11-2076 (issued August 29, 2012); *G.B.*, Docket No. 11-1568 (issued February 15, 2012).

²² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, at Chapter 6.500.8b (September 2018).

mandatory lump-sum repayment by a claimant who is receiving continuing compensation benefits and is not entitled to any accrued compensation benefits.²³

Accordingly, the Board will remand the case for OWCP to apply the criteria of 20 C.F.R § 10.441(a) to arrive at a proper repayment schedule.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$14,822.67 for the period May 6, 2022 through October 28, 2023, 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 the case is not in posture for a decision with regard to the rate of recovery of the \$14,822.67 overpayment.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 10, 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

²³ *Supra* notes 21 and 22; *see also M.D.*, *supra* note 8.

²⁴ *Id.*