

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

M.M., Appellant)	
)	
and)	Docket No. 21-0621
)	Issued: June 6, 2024
U.S. POSTAL SERVICE, OAKLAND)	
PROCESSING & DISTRIBUTION CENTER,)	
Oakland, CA, Employer)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 8, 2021 appellant filed a timely appeal from a September 22, 2020 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 \$18,498.76 for the period September 1, 2018

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 22, 2020 decision, the Board and 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.*

through January 4, 2020, for which he was without fault, as 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 \$350.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 17, 1997 appellant, then a 45-year-old supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed panic attacks, sleep disturbances, gastrointestinal disorders, and musculoskeletal pain due to factors of his federal employment, including psychological abuse by his supervisors. He noted that he first became aware of his conditions on September 28, 1994 and realized their relation to factors of his federal employment on February 7, 1995. Appellant stopped work on September 13, 1997 and his last date of pay status was August 23, 1998. OWCP accepted the claim for depressive reaction. On September 28, 1994, it authorized wage-loss compensation.

On August 5, 2002 the Office of Personnel Management approved appellant's application for disability retirement. An August 5, 2002 notification of personnel action PS Form 50 indicated that his retirement coverage was under the Federal Employees Retirement System (FERS). On October 13, 2007, SSA advised that appellant was receiving SSA disability benefits.

In a September 9, 2014 letter, OWCP informed appellant that section 8116(d)(2) of FECA³ requires that a claimant's continuing compensation benefits be reduced if he begins receiving SSA retirement benefits based on his age and federal service. It advised that because he was approaching his 62nd birthday, they were notifying him of this requirement. OWCP further advised that failure to report receipt of retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery.

On July 13, 2018 OWCP forwarded a FERS/SSA dual benefits form to SSA to determine whether an offset of compensation benefits was required.

On August 9, 2018 SSA indicated that appellant was receiving disability benefits.

On October 29, 2019 OWCP again forwarded a FERS/SSA dual benefits form to SSA to determine whether an offset of compensation benefits was required.

On December 13, 2019 OWCP received a completed FERS/SSA dual benefits form dated December 2, 2019 from SSA, which reported his SSA age-related retirement benefit rates with FERS and without FERS as follows: beginning September 2018 appellant's monthly SSA rate with FERS was \$1,778.30 and without FERS was \$662.20; beginning December 2018 appellant's SSA rate with FERS was \$1,828.00 and without FERS was \$680.70; and beginning December 2019 appellant's SSA rate with FERS was \$1,857.20 and without FERS was \$691.50.

³ 5 U.S.C. § 8116(d)(2).

OWCP completed a FERS offset overpayment calculation worksheet on January 17, 2020. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period September 1, 2018 through January 4, 2020, resulting in a total overpayment of \$18,498.76. OWCP determined that from September 1 through November 30, 2018, appellant received an overpayment in the amount of \$3,348.30; from December 1, 2018 through November 30, 2019 appellant received an overpayment in the amount of \$13,805.42; and from December 1, 2019 through January 4, 2020 appellant received an overpayment in the amount of \$1,345.04.

On January 17, 2020 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$18,498.76, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits during the period September 1, 2018 through January 4, 2020 without an appropriate offset. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a reasonable repayment schedule and advised that he could request waiver of recovery. It further requested that he provide 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, OWCP 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 record or a prerecoumment hearing. No response was received within the time allotted.

By decision dated February 18, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$18,498.76 for the period September 1, 2018 through January 4, 2020, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits during the period September 1, 2018 through January 4, 2020 without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because appellant had not established that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$430.35 from appellant's continuing compensation payments every 28 days.

On February 19, 2020 OWCP received appellant's timely request for a prerecoumment hearing postmarked February 14, 2020 and his request for waiver of recovery of the overpayment. On February 19, 2020 it also received a completed Form OWCP-20 dated February 13, 2020, wherein appellant reported that he had total monthly income of \$5,323.00, total monthly expenses of \$6,996.00, and assets totaling \$950.00. Appellant also listed a second house with a mortgage of \$86,000.00 which he claimed did not generate any income and required extensive repairs. He provided supporting financial documentation.

The prerecoumment hearing was held on July 9, 2020.

On July 9, 2020 the hearing representative requested copies of appellant's bank statements. Appellant indicated that he did not receive the SSA amounts listed in the preliminary overpayment determination. The hearing representative advised appellant to review his SSA benefit statements for the overpayment period, and to submit them if they indicated a different amount.

In a July 16, 2020 letter to OWCP's hearing representative, appellant indicated that his SSA payments conflicted with the information provided in the preliminary overpayment determination. He provided copies of bank statements indicating that he received electronic funds transfers (EFTs) from SSA on October 3, 2018 in the amount of \$1,644.00, and on December 3, 2019 in the amount of \$1,438.20. Appellant also submitted additional financial documentation, as well as an August 6, 2018 statement from SSA indicating that he owed a balance of \$84,980.00, that he would receive \$1,218.00 for August 2018 in September 2018, and that he would thereafter receive \$1,218.00 on or about the third of each month.

By decision dated September 22, 2020, OWCP's hearing representative vacated the February 18, 2020 overpayment decision, finding that appellant had timely requested a prerecoumment hearing. He found that appellant had received an overpayment of compensation in the amount of \$18,498.76 for the period September 1, 2018 through January 4, 2020. The hearing representative further found appellant without fault in the creation of the overpayment, but denied waiver of recovery. He required recovery of the overpayment by deducting \$350.00 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.⁴ 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.⁵

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 benefits that are attributable to the employee's federal service.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of wage-loss compensation for the period September 1, 2018 through January 4, 2020, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

The evidence of record establishes that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, he was also receiving SSA age-related retirement benefits attributable to his federal service during the relevant period. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁸ The information provided by SSA established that appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits that were attributable to federal service during the period September 1, 2018 through January 4, 2020 without an appropriate offset. Consequently, fact and period of overpayment have been established.

The Board further finds, however, that the case is not in posture for decision with respect to the amount of the overpayment. To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amounts of appellant's SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's age-related retirement benefit rates with FERS and without FERS during the overpayment period. Based upon that information, OWCP calculated an overpayment in the amount of \$18,498.76.

However, the case record indicates that on July 9, 2020, appellant asserted that he did not receive the SSA age-related retirement benefit amounts listed in the preliminary overpayment determination. The hearing representative advised appellant to review his SSA benefit statements for the overpayment period, and to submit them if they indicated a different amount. In a July 16, 2020 letter to OWCP's hearing representative, appellant indicated that his SSA payments conflicted with the information provided in the preliminary overpayment determination. Appellant provided copies of bank statements indicating that he received EFTs from SSA on October 3, 2018 in the amount of \$1,644.00, and on December 3, 2019 in the amount of \$1,438.20. Appellant also submitted additional financial documentation, as well as an August 6, 2018 statement from SSA indicating that he owed a balance of \$84,980.00, that he would receive \$1,218.00 for August 2018 in September 2018, and that he would thereafter receive \$1,218.00 on or about the third of each month. Therefore, in light of this conflicting information regarding the amount of SSA age-related retirement benefits appellant received, the Board finds that it remains unclear whether OWCP properly calculated the amount of the overpayment for the period September 1, 2018 through January 4, 2020.

Accordingly, the case shall be remanded for OWCP to clarify the amount of SSA age-related retirement benefits that appellant actually received during the overpayment period. OWCP shall then compute the amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting financial documentation. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹

⁸ See *K.V.*, Docket No. 21-0429 (issued September 13, 2023); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *D.M.*, Docket No. 19-1369 (issued June 30, 2020).

⁹ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period September 1, 2018 through January 4, 2020, 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 case, however, is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2020 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: June 6, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board