

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

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<b>P.V., Appellant</b>	)	
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<b>and</b>	)	
	)	<b>Docket No. 24-0452</b>
	)	<b>Issued: June 14, 2024</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>Long Beach, CA, Employer</b>	)	
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*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 21, 2024 appellant filed a timely appeal from a December 13, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$88,787.22 during the period January 1, 2015 through September 9, 2023, 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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$900.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On November 5, 2002 appellant, then a 57-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained anxiety on October 30, 2002 when rushing to perform several tasks, while in the performance of duty. On January 15, 2003 he filed another Form CA-1 alleging that he sustained anxiety on January 13, 2003 when drafting an e-mail in response to a midterm evaluation, while in the performance of duty. Appellant stopped work on January 21, 2003, and did not return. OWCP administratively combined the claims and processed them as a single occupational disease claim for an emotional condition. On February 15, 2006, it accepted appellant's claim for aggravation of an anxiety state, aggravation of agoraphobia with panic disorder, and aggravation of depressive disorder. OWCP paid appellant wage-loss compensation on the supplemental rolls from March 27, 2003 through February 17, 2007, and on the periodic rolls beginning February 18, 2007.

In a claim for compensation (Form CA-7) dated March 22, 2006, appellant noted that his retirement system was Federal Employees Retirement System (FERS).

On July 25, 2023 OWCP forwarded a FERS/SSA dual benefits form to SSA, requesting information regarding appellant's potential receipt of dual benefits commencing January 1, 2015.

On August 9, 2023 OWCP received a completed FERS/SSA dual benefits form from SSA. SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form listed that appellant's SSA age-related retirement benefit rates with FERS were: \$1,990.20 effective January and December 2015; \$1,996.10 effective December 2016; \$2,036.00 effective December 2017; \$2,093.00 effective December 2018; \$2,126.40 effective December 2019; \$2,154.00 effective December 2020; \$2,281.00 effective December 2021; and \$2,479.40 effective December 2022. The form further indicated that appellant's SSA age-related retirement benefit rates without FERS was \$1,193.50 effective January and December 2015; \$1,197.00 effective December 2016; \$1,220.90 effective December 2017; \$1,255.10 effective December 2018; \$1,275.20 effective December 2019; \$1,291.70 effective December 2020; \$1,367.80 effective December 2021; and \$1,486.80 effective December 2022.

On September 25, 2023 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$88,787.22 during the period January 1, 2015 through September 9, 2023 as he had concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. Appellant had therefore received a prohibited dual benefit. With the preliminary determination, OWCP explained its calculation of his overpayment. For the period January 1 through November 30, 2015, appellant received an overpayment of \$8,772.51; for the period December 1, 2015 through November 30, 2016, he received an overpayment of \$9,612.99; for the period December 1, 2016 through November 30, 2017, he received an overpayment of \$9,615.53; for the period December 1, 2017 through November 30, 2018, he received an overpayment of \$9,808.07; for the period December 1, 2018 through November 30, 2019, he received an overpayment of \$10,082.47; for the period December 1, 2019 through November 30, 2020, he

received an overpayment of \$10,270.48; for the period December 1, 2020 through November 30, 2021 he received an overpayment in the amount of \$10,376.04; for the period December 1, 2021 through November 30, 2022, he received an overpayment of \$10,988.46; and for the period December 1, 2022 through September 9, 2023, he received an overpayment of \$9,260.67. It therefore found an overpayment in the total amount of \$88,787.22. OWCP further advised him of its preliminary determination that he was without fault in the creation of the overpayment. It 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, 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 precouplement hearing.

On November 15, 2023 appellant requested a decision based on the written evidence regarding possible waiver of recovery of the overpayment. In an attached Form OWCP-20, he reported total income of \$8,063.00, total monthly expenses of \$8,128.50, and total assets of \$86,338.00. Appellant provided supporting financial documentation.

By decision dated December 13, 2023, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$88,787.22 for the period January 1, 2015 through September 9, 2023, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It found that he was without fault in the creation of the overpayment, but denied waiver of the recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$900.00 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 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 duty.<sup>2</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>3</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>4</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

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8116.

<sup>4</sup> 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$88,787.22 during the period January 1, 2015 through September 9, 2023, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset.

As previously noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.<sup>6</sup> The evidence of record establishes that appellant had concurrently received wage-loss compensation benefits and SSA age-related retirement benefits that were attributable to federal service during the period January 1, 2015 through September 9, 2023. Consequently, the fact of overpayment has been established.<sup>7</sup>

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 form from SSA regarding potential dual benefits. The SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS for the period January 2015 through December 2022. OWCP explained its calculation of the amount that it should have offset during the relevant period January 1, 2015 through September 9, 2023 based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period January 1, 2015 through September 9, 2023 and finds that OWCP properly calculated an overpayment of compensation in the amount of \$88,787.22.<sup>8</sup>

### **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."<sup>9</sup> Section 10.438 of OWCP 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

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<sup>5</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also* *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>6</sup> *D.W.*, Docket No. 20-1533 (issued May 27, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *N.B.*, *id.*

<sup>7</sup> *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

<sup>8</sup> *See N.V.*, Docket No. 20-0080 (issued January 21, 2022).

<sup>9</sup> 5 U.S.C. § 8129.

an 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.<sup>10</sup>

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.<sup>11</sup>

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>12</sup> 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.<sup>13</sup>

OWCP's procedures provide that the 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.<sup>14</sup> An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid 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.<sup>15</sup>

### **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.<sup>16</sup>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because his reported assets

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<sup>10</sup> 20 C.F.R. § 10.438.

<sup>11</sup> *Id.* at §§ 10.434-10.437.

<sup>12</sup> *Id.* at § 10.436.

<sup>13</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>14</sup> *Id.* at Chapter 6.400.4a(2).

<sup>15</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>16</sup> *Id.* at § 10.436.

of \$86,338.00 exceeds the resource base of \$6,200.00 for an individual with no dependents or \$10,300.00 for an individual with dependents as provided by OWCP's procedures.<sup>17</sup>

As appellant failed to establish that recovery of the overpayment of compensation would either 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.

### **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.<sup>18</sup>

Section 10.441(a) of OWCP's regulations<sup>19</sup> provides in pertinent part:

"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 factors, so as to minimize any hardship."<sup>20</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$900.00 every 28 days from appellant's continuing compensation benefits.

In determining whether appellant could repay the overpayment through \$900.00 deductions from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.<sup>21</sup> The Board thus finds that OWCP properly required recovery of the \$88,787.22 overpayment at the rate of \$900.00 from his continuing compensation payments every 28 days.<sup>22</sup>

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<sup>17</sup> *Supra* note 15.

<sup>18</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>19</sup> *Id.* at § 10.441(a).

<sup>20</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>21</sup> *See J.K.*, Docket No. 20-1190 (issued January 8, 2021).

<sup>22</sup> *See E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$88,787.22 during the period January 1, 2015 through September 9, 2023, for which he was without fault, because 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 \$900.00 from appellant's continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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