

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

G.H., Appellant)	
)	
and)	Docket No. 24-0495
)	Issued: June 20, 2024
DEPARTMENT OF THE NAVY, NAVAL)	
FACILITY ENGINEERING COMMAND,)	
Gulfport, MS, 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 April 10, 2024 appellant filed a timely appeal from a March 14, 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.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,802.38, for the period October 1, 2022 through March 25, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits 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 required recovery of the overpayment by deducting \$359.18 from appellant's continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 5, 2010 appellant, then a 49-year-old heavy mobile equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that on September 22, 2009 he realized that his lower back condition was due to 19 years of repetitive movements required by factors of his federal employment. Appellant's supervisor noted on the Form CA-2 that appellant's retirement plan was the Federal Employees Retirement System (FERS). OWCP accepted the claim for temporary aggravation of degenerative lumbosacral intervertebral disc. It paid appellant wage-loss compensation on the periodic compensation rolls, effective September 26, 2010.

On January 9, 2023 OWCP requested information from SSA regarding potential FERS/SSA dual benefits.

On March 10, 2023 OWCP received a completed FERS/SSA dual benefits form wherein SSA indicated appellant's SSA age-related retirement benefit rates with FERS and without FERS. Beginning October 2022, the SSA rate with FERS was \$1,471.10 and without FERS was \$1,014.00. Beginning December 2022, the SSA rate with FERS was \$1,599.00 and without FERS was \$1,102.20. In a letter dated April 10, 2023, OWCP advised appellant that it had been determined that he had been receiving FERS/SSA dual benefits, therefore, his FECA benefits would be offset by \$458.58 every 28-day payment cycle beginning April 21, 2023 for a net wage-loss compensation payment of \$1,497.00. The record reflects that OWCP adjusted appellant's FECA benefits effective March 26, 2023.

A FERS offset overpayment calculation worksheet indicated that appellant received a \$2,802.68 overpayment of compensation for the period October 1, 2022 through March 25, 2023. OWCP based its FERS offset overpayment calculation on the information SSA provided.

In a preliminary overpayment determination dated September 29, 2023, OWCP advised appellant that he received an overpayment of compensation in the amount of \$2,802.38 for the period October 1, 2022 through March 25, 2023, because his wage-loss compensation benefits had not been reduced by his SSA age-related retirement benefits attributable to his federal service. It explained its calculations for the period October 1 through November 30, 2022. OWCP also made a preliminary determination that he was without fault in the creation of the overpayment. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised him that he could request waiver of recovery of the overpayment. OWCP 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 that support income and expenses. Additionally, it 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 prerecoumment hearing.

On October 7, 2023 appellant requested a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment.

Appellant submitted a completed Form OWCP-20 dated October 7, 2023, listing total monthly income of \$4,335.10 and total monthly expenses of \$3,350.00. He also listed assets totaling \$9,000.00. OWCP received copies of a bank statement, checks, and a June 7, 2022 letter

from SSA, which confirmed appellant's SSA monthly age-related benefit in the amount of \$1,471.00 commencing October 2022.

A prerecoument hearing was held on February 12, 2024. OWCP's hearing representative afforded appellant 30 days to submit additional evidence. No further evidence was received.

By decision dated March 14, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$2,802.38 for the period October 1, 2022 through March 25, 2023, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. He found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$359.18 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.² 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.³

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.⁴ 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 age-related retirement benefits 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 benefits.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,802.38, for the period October 1, 2022 through March 25, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see B.M.*, Docket No. 23-0891 (issued January 30, 2024); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

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

The evidence of record indicates that, while appellant was receiving FECA wage-loss compensation, he was also receiving SSA age-related retirement benefits that were attributable to his federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period, without an appropriate offset.⁶ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service October 1, 2022 through March 25, 2023. Consequently, the Board finds that fact of overpayment has been established.

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 amount of 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 for the period October 1, 2022 through March 25, 2023. OWCP provided its calculations for each relevant period based on SSA's dual benefits form.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period October 1, 2022 through March 25, 2023 and finds that an overpayment of compensation in the amount of \$2,802.38 was created.⁷

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.⁸

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.⁹ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁰

⁶ 20 C.F.R. § 10.421(d); *M.T.*, Docket No. 24-0303 (issued April 25, 2024); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *See R.F.*, Docket No. 20-0159 (issued October 15, 2020); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 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).

¹⁰ *Id.* at Chapter 6.400.4.a(3); *see also B.M.*, *supra* note 4; *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

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

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 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 Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹³

ANALYSIS -- ISSUE 2

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

Appellant provided a completed Form OWCP-20; however, his monthly income exceeded his expenses by more than \$50.00.¹⁴ As such, appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience because he has not shown, that he would experience severe financial hardship in attempting to repay the debt, that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.¹⁵ Accordingly, OWCP properly denied waiver of recovery of the overpayment.¹⁶

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.¹⁷

¹¹ 20 C.F.R. § 10.437(a)-(b).

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

¹³ *Id.* at § 10.438; *D.L.*, Docket No. 20-1522 (issued July 27, 2023).

¹⁴ *Supra* note 12.

¹⁵ *L.E.*, Docket No. 22-0203 (issued March 17, 2023); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

¹⁶ *M.T.*, *supra* note 6.

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

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$359.18 from appellant's continuing compensation payments every 28 days.

Based on the evidence of record, OWCP gave due regard to the relevant factors to minimize hardship and did not abuse its discretion in setting the rate of recovery.¹⁸ The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$359.18 from appellant's continuing compensation payments every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,802.38, for the period October 1, 2022 through March 25, 2023, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, 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 \$359.18 from appellant's continuing compensation payments every 28 days.

¹⁸ See, *K.W.*, Docket No. 23-1166 (issued February 14, 2024); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 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