

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

---

<b>M.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0344</b>
	)	<b>Issued: May 8, 2024</b>
<b>U.S. POSTAL SERVICE, BEDFORD POST OFFICE, Bedford, OH, Employer</b>	)	
	)	

---

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 15, 2024 appellant, through counsel, filed a timely appeal from a January 24, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</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 \$24,518.41, for the period August 1, 2022 through

---

<sup>1</sup> 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 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

August 12, 2023, for which he was without fault, because he concurrently received FECA wage-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 required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On September 28, 2008 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained injury to his neck, shoulder, and hand due to factors of his federal employment including carrying a mailbag for over 20 years. OWCP accepted the claim for aggravation of preexisting cervical spondylosis with myelopathy. It paid appellant wage-loss compensation on the supplemental rolls as of September 9, 2008, and on the periodic rolls as of October 25, 2009.

On June 14, 2023 OWCP provided SSA with a FERS/SSA dual benefits form requesting information concerning a potential overpayment. On August 4, 2023 SSA provided a dual benefits calculation request form which showed appellant's SSA age-related retirement benefit rates with and without a FERS offset as of August 1, 2022. Beginning August 1, 2022, the SSA rate with FERS was \$2,812.50 and without FERS was \$949.40; and beginning December 1, 2022, the SSA rate with FERS was \$3,057.10 and without FERS was \$1,031.90.

OWCP completed a FERS offset calculation on September 6, 2023 which indicated that appellant had received an overpayment from August 1 through November 30, 2022 in the amount of \$7,493.33, and from December 1, 2022 through August 12, 2023 in the amount of \$17,025.08, resulting in a total overpayment amount of \$24,518.41.

On September 6, 2023 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$24,518.41, had been created because it had failed to reduce appellant's wage-loss compensation payments for the period August 1, 2022 through August 12, 2023, to offset his SSA age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment because the evidence did not support that he was aware that the receipt of full SSA age-related retirement benefits concurrent with the disability/wage-loss compensation would result in an overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised that he could request waiver of the overpayment. 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 evidence or a prerecoupment hearing.

On October 5, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

On December 10, 2023 appellant completed the Form OWCP-20 and noted that he had total monthly income of \$4,814.00 and monthly expenses of \$1,821.27, and \$36,507.35 in

checking, savings, and cash on hand. Appellant did not submit any supporting financial documentation.

The hearing was held on December 19, 2023. By decision dated January 24, 2024, the OWCP hearing representative finalized the preliminary overpayment and found that OWCP properly determined that appellant received an overpayment in the amount of \$24,518.41, for the period August 1, 2022 through August 12, 2023. She further determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery, noting that appellant's Form OWCP-20 indicated that he had monthly income of \$4,814.00 and monthly expenses of \$1,821.27, and \$36,507.35 in checking, savings, and cash on hand. The hearing representative directed that the overpayment amount be recovered by deducting \$300.00 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.<sup>3</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>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,518.41, for the period August 1, 2022 through August 12, 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 evidence of record indicates that while appellant was receiving compensation for wage-loss under FECA, he also was receiving SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period without an

---

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

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

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

appropriate offset.<sup>7</sup> The information provided by SSA established that, during the period August 1, 2022 through August 12, 2023, appellant received SSA age-related retirement benefits that were attributable to federal service while he also received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's 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 appellant's federal service. SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for specific periods from August 1, 2022 through August 12, 2023. OWCP provided its calculations for each relevant period based on the SSA worksheet which showed that appellant received an overpayment in the amount of \$24,518.41. The Board has reviewed OWCP's calculations and finds that it properly calculated that appellant received prohibited dual benefits for the period August 1, 2022 through August 12, 2023, totaling \$24,518.41.

### **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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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

---

<sup>7</sup> 20 C.F.R. § 10.421(d); *see S.M., supra* note 5; *L.J., supra* note 5.

<sup>8</sup> 5 U.S.C. § 8129(a)-(b).

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

<sup>10</sup> 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).

<sup>11</sup> *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

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.<sup>12</sup>

OWCP 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

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

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

On his December 10, 2023 OWCP-20 form appellant indicated that he had monthly income of \$4,814.00, monthly expenses of \$1,821.27, and assets of approximately \$36,501.35. The Board finds that appellant's assets exceed the allotted amounts and therefore he is not entitled to waiver of the recovery of the overpayment.<sup>17</sup> The evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>18</sup>

---

<sup>12</sup> *Id.* at § 10.437(a)(b).

<sup>13</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>14</sup> *See L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

<sup>15</sup> 5 U.S.C. § 8129.

<sup>16</sup> 20 C.F.R. § 10.436.

<sup>17</sup> 5 U.S.C. § 8129.

<sup>18</sup> 20 C.F.R. § 10.438.

### **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>19</sup> Section 10.441(a) of OWCP's implementing regulations provides that if 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.<sup>20</sup> 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>21</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by repayment of \$300.00 from appellant's continuing compensation payments every 28 days.

As noted on the December 10, 2023 Form OWCP-20, appellant had monthly income of \$4,814.00, monthly expenses of \$1,821.27, and assets of approximately \$36,501.35. OWCP took into consideration the financial information appellant provided, as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize resulting hardship.<sup>22</sup> The Board therefore finds that OWCP properly required recovery of the overpayment by deducting \$300.00 per month from appellant's continuing compensation payments every 28 days.<sup>23</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$24,518.41, for the period August 1, 2022 through August 12, 2023, for which he was without fault, as he concurrently received FECA wage-loss 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 repayment of \$300.00 from appellant's continuing compensation payments every 28 days.

---

<sup>19</sup> See *P.G.*, Docket No. 22-1073 (issued December 28, 2022); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>20</sup> 20 C.F.R. § 10.441(a).

<sup>21</sup> *Id.*

<sup>22</sup> *J.R.*, Docket No. 21-0485 (issued December 10, 2021); *M.B.*, Docket No. 20-1578 (issued March 25, 2021).

<sup>23</sup> See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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