

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 \$480.55 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 23, 2017 appellant, then a 61-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2017 he developed lower back pain radiating down into his right leg after operating a weed eater while in the performance of duty. He stopped work on that date. OWCP initially accepted the claim for strain of the lower back and on October 4, 2018 it expanded the acceptance of the claim to include intervertebral disc disorders with lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls commencing October 9, 2017, and on the periodic rolls commencing December 10, 2017.

On February 27, 2024 OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On March 6, 2024 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 September 2022, the SSA rate with FERS was \$2,071.20 and without FERS was \$773.20. Beginning December 2022, the SSA rate with FERS was \$2,251.30 and without FERS was \$840.40. Beginning December 2023, the SSA rate with FERS was \$2,323.30 and without FERS was \$867.20. In a letter dated April 5, 2024, 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 \$1,344.09 every 28-day payment cycle beginning March 24, 2024 for a net wage-loss compensation payment of \$1,922.21. The record reflects that OWCP adjusted appellant's FECA wage-loss compensation accordingly, effective April 21, 2024.

A FERS offset overpayment calculation worksheet indicated that appellant received a \$27,687.77 overpayment of compensation for the period September 1, 2022 through April 20, 2024. The overpayment calculation was based on the information that SSA had provided.

In a preliminary overpayment determination dated May 8, 2024, OWCP advised appellant that he received an overpayment of compensation in the amount of \$27,687.77 for the period September 1, 2022 through April 20, 2024, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation based on his federal service without an appropriate offset. It explained its calculations for the period September 1, 2022 through April 20, 2024. OWCP also made a preliminary determination that appellant was without fault in the creation of the overpayment. It requested that he 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 appellant 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 precoupment hearing.

On May 27, 2024 appellant requested that OWCP issue a decision based on the written evidence, and requested waiver of recovery of the overpayment.

Appellant submitted a completed Form OWCP-20 dated May 27, 2024, listing total monthly income of \$7,810.50, and total monthly expenses of \$3,595.61. He also listed assets totaling \$24,743.29. OWCP received copies of utility bills, postal service retirement payments, a statement of Department of Veteran Affairs (VA) benefits, bank statement, and credit card statements.

In a June 14, 2024 development letter, OWCP requested that appellant provide additional financial documentation supporting his reported income, expenses, and assets. In a June 24, 2024 memorandum of telephone call (Form CA-110) appellant related that he had no additional monthly expenses.

By decision dated June 25, 2024, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$27,687.77 for the period September 1, 2022 through April 20, 2024, 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 \$480.55 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.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 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.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 age-related retirement benefits earned as a federal employee is part of the FERS retirement

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 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).

package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefits.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$27,687.77, for the period September 1, 2022 through April 20, 2024, 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 FECA wage-loss compensation, he was also receiving SSA age-related retirement benefits that were attributable to his federal service, without an 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.⁷ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service for the period September 1, 2022 through April 20, 2024. Consequently, the Board finds that fact of overpayment has been established.⁸

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 September 1, 2022 through April 20, 2024. OWCP provided its overpayment calculations for each relevant period based on SSA's dual benefits form.

The Board has reviewed OWCP's calculation of dual benefits received by appellant for the period September 1, 2022 through April 20, 2024 and finds that an overpayment of compensation in the amount of \$27,687.77 was created.⁹

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

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

⁷ *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.*

⁸ *See L.B.*, Docket No. 19-1322 (issued January 27, 2020).

⁹ 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).

good conscience.”¹⁰ 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 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.¹¹

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.¹²

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.¹³ 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 \$50.00.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

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

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at §§ 10.434-10.437.

¹³ *Id.* at § 10.436.

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

¹⁵ *Id.* at Chapter 6.400.4a(2).

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

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.¹⁷

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 of \$24,743.29 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.¹⁸

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.¹⁹

Section 10.441 of OWCP's regulations²⁰ 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$480.55 from appellant's continuing compensation payments every 28 days.

In determining whether appellant could repay the overpayment through \$480.55 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.²² The Board thus finds that OWCP

¹⁷ *Id.* at § 10.436.

¹⁸ *Supra* note 15.

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

²⁰ *Id.* at § 10.441(a).

²¹ *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²² *See J.K.*, Docket No. 20-1190 (issued January 8, 2021).

properly required recovery of the \$27,687.77 overpayment at the rate of \$480.55 from his continuing compensation payments every 28 days.²³

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$27,687.77, for the period September 1, 2022 through April 20, 2024, 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 \$480.55 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief 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 See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).