

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

M.C., Appellant)	
)	
and)	Docket No. 24-0829
)	Issued: October 23, 2024
U.S. POSTAL SERVICE, ASHLAN PARK POST)	
OFFICE, Fresno, 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 August 12, 2024 appellant filed a timely appeal from a June 12, 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.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,560.34, for the period August 1, 2023 through April 20, 2024, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and Social Security Administration (SSA) age-related retirement

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 12, 2024 decision, 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.*

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 \$614.32 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 11, 2005 appellant, then a 48-year-old letter carrier (swing) filed an occupational disease claim (Form CA-2) alleging that he developed a pinched nerve in his lower back due to factors of his federal employment including lifting and carrying heavy parcels and a large volume of mail. He stopped work on May 2, 2005. OWCP accepted the claim for lumbar sprain/strain. It paid wage-loss compensation on the supplemental rolls from April 28, 2005 until his return to full-time modified duty on April 23, 2008. OWCP subsequently expanded the acceptance of the claim to include lumbosacral neuritis or radiculitis and sacroiliitis and it authorized a right-side sacroiliac joint fusion surgery on September 3, 2013. Appellant stopped work on September 30, 2013 and worked intermittently thereafter. OWCP paid appellant wage-loss compensation on the periodic rolls commencing August 21, 2016. On February 9, 2024 it further expanded the acceptance of the claim to include lumbar spondylopathy, lumbar spondylosis, and lumbar intervertebral disc disorder with radiculopathy.

On March 25, 2024 OWCP requested information from SSA regarding potential Federal Employees Retirement System (FERS)/SSA dual benefits.

On April 16, 2024 OWCP received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with FERS and without FERS. Beginning August 2023, the SSA rate with FERS was \$2,194.20 and without FERS was \$1,227.30. Beginning December 2023, the SSA rate with FERS was \$2,264.400 and without FERS was \$1,266.50. In a letter dated May 3, 2024, OWCP advised appellant that it had been determined that, because he had been receiving FERS/SSA dual benefits, his FECA wage-loss compensation would be offset by \$997.90 per month beginning May 18, 2024 for a new net wage-loss compensation payment of \$2,457.29.

A FERS offset overpayment calculation worksheet indicated that appellant received a \$8,560.34 overpayment of compensation for the period August 1, 2023 through April 20, 2024. OWCP based its FERS offset overpayment calculation on the information SSA provided.

In a preliminary overpayment determination dated May 6, 2024, OWCP advised appellant that he received an overpayment of compensation in the amount of \$8,560.34 for the period August 1, 2023 through April 20, 2024, 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 September 1, 2023 through April 20, 2024. 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 precoupment hearing. No response was received.

By decision dated June 12, 2024, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,560.34 for the period August 1, 2023 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 \$614.32 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 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 \$8,560.34, for the period August 1, 2023 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 evidence of record indicates that, while appellant was receiving FECA wage-loss compensation, he was concurrently 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

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).

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

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 from August 1, 2023 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 August 1, 2023 through April 20, 2024. 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 August 1, 2023 through April 20, 2024 and finds that an overpayment of compensation in the amount of \$8,560.34 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 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

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).

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at §§ 10.434-10.437.

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.

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

In its preliminary overpayment determination dated May 6, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver if he failed to furnish the requested financial information in a timely manner. Appellant neither completed a Form OWCP-20, nor provided any supporting financial documentation within the allotted time period following the May 6, 2024 preliminary overpayment determination. OWCP, therefore, did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁸

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

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).

¹⁷ *Id.* at § 10.436.

¹⁸ *B.J.*, Docket No. 24-0599 (issued July 16, 2024); *J.M.*, Docket No. 24-0356 (issued May 24, 2024); *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

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 \$614.32 from appellant's continuing compensation payments every 28 days.

As noted, appellant did not provide the necessary financial information to support his income, expenses and assets prior to the final overpayment decision. When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²² The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$614.32 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 \$8,560.34, for the period August 1, 2023 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 \$614.32 from appellant's continuing compensation payments every 28 days.

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 *C.B.*, Docket No. 24-0285 (issued April 24, 2024); *J.A.*, Docket No. 19-1946 (issued July 13, 2020); *Frederick Arters*, 53 ECAB 397 (2002).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 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