

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

M.A., Appellant	)	
	)	
and	)	Docket No. 24-0884
	)	Issued: October 7, 2024
DEPARTMENT OF LABOR, OCCUPATIONAL	)	
SAFETY & HEALTH ADMINISTRATION,	)	
Calumet City, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 2, 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 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,831.99, for the periods January 30 through

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

<sup>2</sup> The Board notes that following the March 14, 2024 decision, a appellant submitted additional evidence to OWCP. 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.*

November 30, 2020, and May 1, 2021 through August 12, 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 overpayment by deducting \$303.38 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On January 24, 2018 appellant, then a 71-year-old safety technician, filed an occupational disease claim (Form CA-2) alleging that he sustained left carpal tunnel syndrome due to factors of his federal employment, including the use of a computer. On the reverse side of the form, his supervisor listed his retirement coverage as Federal Employees Retirement System (FERS). OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral ulnar nerve lesions.

On January 30, 2020 appellant underwent OWCP-authorized left carpal tunnel release.

OWCP paid appellant wage-loss compensation on the supplemental rolls, effective January 30, 2020, and on the periodic rolls, effective June 21, 2020.

On December 1, 2020 appellant returned to limited-duty work and again stopped work on May 1, 2021. OWCP paid him wage-loss compensation benefits on the supplemental rolls, effective May 1, 2021, and on the periodic rolls, effective May 23, 2021.

On June 14, 2023 OWCP provided SSA with a FERS/SSA dual benefits form. It requested appellant's SSA age-related retirement benefits rates with and without FERS.

On August 3, 2023 OWCP received a completed FERS/SSA dual benefits form from SSA, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that beginning January 2020, his SSA rate with FERS was \$2,574.10 and without FERS \$2,272.40. Beginning December 2020, his SSA rate with FERS was \$2,607.50 and without FERS \$2,301.90. Beginning December 2021, his SSA rate with FERS was \$2,761.30 and without FERS \$2,437.70. Beginning December 2022, his SSA rate with FERS was \$3,001.50 and without FERS \$2,649.70.

In a FERS offset overpayment calculation worksheet dated August 17, 2023, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. It found that, for the period January 30 through November 30, 2020, appellant received an overpayment in the amount of \$2,824.67; and for the period May 1, 2021 through August 12, 2023, appellant received an overpayment in the amount of \$9,007.32. OWCP added the two amounts to calculate a total overpayment of \$11,831.99.

Effective August 13, 2023, OWCP offset appellant's FECA wage-loss compensation benefits by his SSA age-related retirement benefits. Appellant's new net wage-loss compensation payment every 28 days would be changed to \$6,488.42.<sup>3</sup>

On December 19, 2023 OWCP notified appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$11,831.99 for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 2023, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method and advised him that he could request a waiver of the overpayment. It further requested that he provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP further 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 preresoupment hearing.

On January 18, 2024 appellant requested that OWCP make a decision based on the written evidence of record and requested waiver of recovery of the overpayment.

Appellant also submitted a completed Form OWCP-20, wherein he reported monthly income of \$14,510.00 and monthly household expenses for himself and his wife, with whom he resided, of \$5,846.00. He further identified assets of \$800.00 cash on hand, \$25,240.00 in a checking account, and \$11,000.00 in personal property. Appellant provided copies of his SSA and FECA benefits statement, and a checking account statement, however, he did not submit any financial documentation as requested.

By decision dated March 14, 2024, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,831.99 for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 2023, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It further found that he was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment, noting that appellant submitted no financial documentation to support the expenses listed on the Form CA-20. OWCP required recovery of the overpayment by deducting \$303.38 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 of an employee resulting from personal injury sustained while in the performance of his

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<sup>3</sup> On October 17, 2023 OWCP expanded the acceptance of a appellant's claim to include the additional conditions of left middle and ring trigger fingers, aggravation of primary osteoarthritis of the hands, and aggravation of primary osteoarthritis of the wrists.

or her federal employment.<sup>4</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>5</sup>

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>6</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 wage-loss compensation and federal retirement concurrently is a prohibited dual benefit.<sup>7</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,831.99, for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 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.

In its March 14, 2024 decision, OWCP found that an overpayment of compensation was created for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 2023. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. As previously noted, a claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 2023. Consequently, the fact of overpayment has been established.<sup>9</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. The SSA provided appellant's SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing January 30, 2020 through August 12, 2023. In its December 19, 2023 preliminary overpayment determination, OWCP calculated the amount of overpayment by determining the difference

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8116.

<sup>6</sup> 20 C.F.R. § 10.421(d).

<sup>7</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>8</sup> *P.B.*, Docket No. 23-0955 (issued March 13, 2024); *see E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>9</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

between the SSA rate with and without FERS for each period and multiplying the daily offset amount by the number of days in each period, to find a total overpayment of \$11,831.99.

The Board has reviewed OWCP's calculation of benefits received by appellant for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 2023, and finds that an overpayment of compensation in the amount of \$11,831.99 was created.

### **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>10</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>11</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>12</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 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>13</sup>

OWCP's 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.<sup>14</sup>

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

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

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<sup>10</sup> 5 U.S.C. § 8129(a)-(b).

<sup>11</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); see *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>12</sup> *Supra* note 6 at § 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>13</sup> *Id.* at § 10.437(a)(b).

<sup>14</sup> *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

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>

In its preliminary overpayment determination dated December 19, 2023, OWCP explained the importance of providing the completed Form OWCP-20 and financial information. It advised appellant that it would deny waiver of recovery of the overpayment if he failed to furnish the requested financial information within 30 days. Appellant submitted a completed Form OWCP-20 with documentation of his SSA and FECA benefits, and checking account balance, but did not provide financial documentation of the listed expenses. 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>17</sup>

Consequently, as appellant did not submit the documentation required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>18</sup>

### **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 regulations<sup>20</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

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<sup>15</sup> 5 U.S.C. § 8129.

<sup>16</sup> *Supra* note 6 at § 10.436.

<sup>17</sup> *Supra* note 6 at § 10.438.

<sup>18</sup> *See E.T.*, Docket No. 22-0234 (issued August 17, 2022); *T.E.*, Docket No. 19-0348 (issued December 11, 2019).

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

<sup>20</sup> *Id.*

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 deducting \$303.38 from appellant’s continuing compensation payments every 28 days.

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 any resulting hardship.<sup>22</sup> The Board, therefore, finds that OWCP properly required recovery of the overpayment by deducting \$303.38 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 \$11,831.99, for the periods January 30 through November 30, 2020, and May 1, 2021 through August 12, 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 the recovery of the overpayment, and properly required recovery of the overpayment by deducting \$303.38 from appellant’s continuing compensation payments every 28 days.

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<sup>21</sup> *Id.*; *see also J.L.*, Docket No. 22-1393 (issued August 15, 2024); *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<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 March 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2024  
Washington, DC

Alec J. Koromilas, 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