

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

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**P.D., Appellant** )

**and** )

**U.S. POSTAL SERVICE, LAKE ORION POST** )  
**OFFICE, Lake Orion, MI, Employer** )  
\_\_\_\_\_ )

**Docket No. 24-0923**  
**Issued: October 15, 2024**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*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 13, 2024 appellant, through counsel, filed a timely appeal from an August 22, 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 \$38,688.75, during the period December 1, 2021

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<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.*

through December 3, 2022, for which he was without fault, as he concurrently received Office of Personnel Management (OPM) retirement benefits and FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 29, 2017 appellant a 55-year-old rural carrier filed an occupational disease claim (Form CA-2) alleging that he sustained a torn right rotator cuff due to factors of his federal employment.<sup>4</sup> He attributed his condition to the accepted January 16, 2016 employment injury,<sup>5</sup> and placing mail in a mailbox and experienced sharp pain in his right shoulder. Appellant indicated that he became aware of his condition on January 16, 2016, and attributed it to factors of his federal employment on March 11, 2017. He stopped work on March 11, 2017, and did not return. OWCP accepted the claim for an incomplete right rotator cuff tear.

The record reveals that appellant is under the Federal Employees Retirement System (FERS).

In a letter dated December 16, 2022, OWCP advised OPM that appellant elected OPM retirement benefits, effective December 1, 2021.

On December 16, 2022 OWCP issued a preliminary overpayment determination that an overpayment was created in the amount of \$35,321.54, for the period January 3 through December 3, 2022, because appellant received prohibited dual benefit payments. It explained that the overpayment occurred because appellant concurrently received both FECA compensation benefits and OPM retirement benefits during the period, which resulted in a prohibited dual benefit payment. OWCP provided appellant with its calculations listing the FECA compensation benefits that he received after his election of OPM benefits on December 1, 2021. Its calculations showed that appellant received FECA benefits from January 3 through December 3, 2022 in the amount of \$35,321.54. OWCP further determined that appellant was without fault in the creation of the overpayment because there was no evidence of record to demonstrate that he knew or should have known that the payments were incorrect at the time that he received them. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20), and submit

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<sup>3</sup> Docket No. 19-1027 (issued November 13, 2019).

<sup>4</sup> OWCP assigned this claim OWCP File No. xxxxxx662.

<sup>5</sup> On January 20, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2016 he sustained a separated right shoulder, bruised hip, and dislocated fingers when he slipped and fell on ice carrying packages while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx022. On August 22, 2017 it accepted that the January 16, 2016 employment incident caused a left hand sprain, left wrist sprain, left hand contusion, right shoulder contusion, right shoulder sprain, right hip contusion, right hip sprain, and dislocation of the left index finger. On November 16, 2017 OWCP administratively combined OWCP File Nos. xxxxxx662 and xxxxxx022, with OWCP File No. xxxxxx022 designated as the master file number.

supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP provided an overpayment action request form and notified him 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.

Appellant completed the overpayment action request form on January 4, 2023, requesting a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He requested waiver of recovery of the overpayment as he was found without fault.

Appellant also completed a Form OWCP-20 on January 7, 2023, wherein he listed \$700.00 in monthly income from his Social Security Administration (SSA) benefits, and \$2,694.00 in monthly expenses including \$415.00 for rent or mortgage, \$400.00 for food, \$200.00 for clothing, \$1,000.00 for utilities, \$200.00 for miscellaneous expenses, and \$479.00 in debt repayment.

A prerecoupment hearing was held on June 6, 2023. At the hearing, appellant asserted that his only income was approximately \$500.00 a month from a settlement for injuries sustained in a motorcycle accident approximately 40 years previously. He contended that he had not received SSA benefits since November 2022. Appellant noted that he had \$4,000.00 in a retirement account but had been unable to withdraw it.

By decision dated July 26, 2023, the OWCP hearing representative vacated the December 16, 2022 preliminary overpayment determination and remanded the case to OWCP to confirm that appellant was issued OPM retirement annuity benefits for the period January 3, 2021 through December 3, 2022. He also instructed OWCP to request that appellant make an election between OPM and FECA benefits.

In letters dated August 8 and September 8, 2023, OWCP requested that OPM indicate whether it was paying retirement annuity benefits to appellant from December 1, 2021 and continuing.

In an October 17, 2023 letter, OPM confirmed that it had paid appellant annuity retirement benefits commencing December 1, 2021, with no periods of suspension.

In a January 22, 2024 letter, OWCP requested that appellant complete a new election of benefits form. It advised him that a failure to respond within 30 days may result in a determination that he elected OPM retirement benefits effective December 1, 2021, by default. No response was received.

On February 26, 2024 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$38,688.75, for the period December 1, 2021 through December 3, 2022, because appellant received prohibited dual benefit payments. It explained that the overpayment occurred because appellant concurrently received both FECA compensation benefits and OPM retirement benefits during the period, which resulted in a prohibited dual benefit payment. OWCP provided appellant with its calculations listing the FECA compensation benefits that he received after his election of OPM benefits on

December 1, 2021. Its calculations showed that appellant received FECA benefits from December 1, 2021 through December 3, 2022 in the amount of \$38,688.75. OWCP further determined that appellant was without fault in the creation of the overpayment because he could not have been aware that the payments were incorrect at the time that he received them. It requested that he complete an enclosed Form OWCP-20, and submit supporting financial documentation, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP noted that failure to submit the required financial information within 30 days would result in the denial of waiver and no further request for waiver would be considered until the requested information was furnished. Additionally, it provided an overpayment action request form and notified him 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.

Appellant completed the overpayment action request form on March 5, 2024, requesting a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. He requested waiver of recovery of the overpayment as he was found without fault.

On June 2, 2024 appellant completed a Form OWCP-20 listing monthly income of \$472.00, and monthly expenses of \$1,450.00, including \$565.00 for rent or mortgage, \$190.00 for food, \$400.00 for utilities, and \$295.00 in debt repayment. He listed assets of \$6,000.00 in bank accounts. No financial documentation was received.

A prerecoumment hearing was held on June 7, 2024. At the hearing, appellant contended that his gross monthly retirement payment was \$488.00, and his net payment was \$158.36. He asserted that the financial information provided on the January 7, 2023 Form OWCP-20 was no longer accurate.

By decision dated August 22, 2024, OWCP finalized the preliminary overpayment determination to find that appellant had received an overpayment of compensation in the amount of \$38,688.75 for the period December 1, 2021 through December 3, 2022 as he received both FECA payments and OPM retirement annuity payments for the same period. It denied waiver as the evidence of record failed to establish that appellant needed substantially all of his current income to meet current ordinary and necessary living expenses as indicated on the January 7, 2023 OWCP-20 Form. OWCP found that appellant did not submit the financial documentation requested to substantiate his expenses. It required repayment of the debt by a single payment of the entire overpayment amount of \$38,688.75. OWCP noted that appellant was not entitled to a compromise of the debt due to his age or ability to repay the debt as recovery would be accomplished by single payment and not through monthly payments.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 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 duty.<sup>6</sup> Section 8116 limits the right of an employee to receive compensation. While an employee

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<sup>6</sup> 5 U.S.C. § 8102(a).

is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>7</sup>

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>8</sup> The beneficiary must elect the benefit that he or she wishes to receive.<sup>9</sup> OWCP's procedures also explain that the employee must make an election between FECA and OPM retirement benefits. The employee has the right to elect the monetary benefit, which is the more advantageous.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$38,688.75, during the period December 1, 2021 through December 3, 2022, for which he was without fault, as he concurrently received OPM retirement benefits and FECA wage-loss compensation benefits.

The language of section 8116(a) of FECA and section 10.421(a) of OWCP's implementing regulations prohibits the receipt of FECA wage-loss benefits and a federal annuity. As appellant received FECA benefits while concurrently electing to receive OPM retirement benefits, an overpayment of compensation was created.<sup>11</sup>

In a letter dated October 17, 2023, OPM advised OWCP that it began payments to appellant effective December 1, 2021. OWCP thereafter determined that an overpayment in the amount of \$38,688.75 had been created, as appellant continued to be paid FECA compensation after his election of OPM retirement benefits for the period December 1, 2021 through December 3, 2022.

OWCP's preliminary overpayment determination explained that the overpayment occurred because appellant was paid FECA workers' compensation between December 1, 2021 and December 3, 2022, during the period he elected OPM retirement benefits. It provided its calculations for the above-noted time period and properly calculated that from December 1, 2021

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<sup>7</sup> *Id.* at § 8116.

<sup>8</sup> 20 C.F.R. § 10.421(a).

<sup>9</sup> *Id.*

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4a (January 1997); *see also* R.S., Docket No. 11-0428 (issued September 27, 2011); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994)

<sup>11</sup> *A.F.*, Docket No. 24-0399 (issued May 23, 2024); *See E.F.*, Docket No. 18-1320 (issued March 13, 2019); *E.H.*, Docket No. 15-0312 (issued August 19, 2016); *Franklin L. Bryan*, 56 ECAB 310 (2005).

through December 3, 2022, appellant received FECA workers' compensation in the amount of \$38,688.75, which was a prohibited dual benefit.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$38,688.75, for the period December 1, 2021 through December 3, 2022.

### **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>12</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>13</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship 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>14</sup> 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.<sup>15</sup> Also, 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.<sup>16</sup>

Section 10.437 of OWCP's implementing regulations provides that 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>17</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and

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<sup>12</sup> 5 U.S.C. § 8129(a)-(b).

<sup>13</sup> See *S.R.*, Docket No. 20-1416 (issued September 8, 2022); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

<sup>14</sup> 20 C.F.R. § 10.436(a)-(b).

<sup>15</sup> *Supra* note 10 at Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>16</sup> *Id.* at Chapter 6.400.4a(2) (September 2020).

<sup>17</sup> 20 C.F.R. § 10.437; see *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>18</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. The information is also used to determine the repayment schedule, if necessary.<sup>19</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>20</sup>

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

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

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>21</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>22</sup>

In its preliminary overpayment determination dated February 26, 2024, OWCP explained the importance of providing the completed Form OWCP-20 and supporting 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 appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant submitted information regarding his income and expenses in OWCP-20 forms signed on January 7, 2023 and June 2, 2024. However, he did not provide financial documentation regarding his income and expenses.<sup>23</sup> As a result, OWCP 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

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<sup>18</sup> *Supra* note 10 at Chapter 6.400.4c(3) (September 2020).

<sup>19</sup> 20 C.F.R. § 10.438(a); *D.P.*, Docket No. 21-0187 (issued August 12, 2024); *P.N.*, Docket No. 20-1159 (issued April 20, 2021); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>20</sup> *Id.* at 10.438(b).

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

<sup>22</sup> 20 C.F.R. § 10.438; *D.P.*, *supra* note 19; *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *N.J.*, Docket No. 19-1170 (issued January 10, 2020).

<sup>23</sup> *D.P.*, *id.*, *B.G.*, *id.*; *R.M.*, Docket No. 19-1570 (issued June 1, 2020).

equity and good conscience.<sup>24</sup> The Board thus finds that OWCP properly denied waiver of recovery of the overpayment.<sup>25</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$38,688.75, during the period December 1, 2021 through December 3, 2022, for which he was without fault, as he concurrently received OPM retirement benefits and FECA wage-loss compensation benefits. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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

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<sup>24</sup> *D.P., id., B.G., id.; G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>25</sup> 20 C.F.R. § 10.438; *D.P., id.; see B.G., id.; L.D.*, Docket No. 19-0606 (issued November 21, 2019).