

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

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F.M., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. COAST GUARD, OFFICE OF CIVILIAN )  
PERSONNEL, Staten Island, NY, Employer )  
\_\_\_\_\_ )

**Docket No. 24-0751  
Issued: September 24, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 5, 2024 appellant filed a timely appeal from a June 26, 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 \$7,111.10 for the period November 1, 2021

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

<sup>2</sup> The Board notes that, following the June 26, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

through April 22, 2023, for which he was not at fault, as he concurrently received FECA wage-loss compensation benefits 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 \$350.00 from appellant's continuing compensation benefits, every 28 days.

### **FACTUAL HISTORY**

On May 9, 2013 appellant, then a 55-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 29, 2013 he sustained a back injury when he was installing flooring and bending while in the performance of duty.<sup>3</sup> OWCP accepted the claim for closed dislocation of the lumbar vertebra and aggravation of lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls, effective June 14, 2013, and on the periodic rolls, effective June 29, 2014.<sup>4</sup>

On January 9, 2023 OWCP provided SSA with a FERS/SSA dual benefits form, requesting information concerning a potential overpayment.

On March 20, 2023 SSA returned the completed form, which showed SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from November 2021 through December 2022. Beginning November 2021, the SSA rate with FERS was \$1,152.00 and without FERS was \$780.90; beginning December 2021, the SSA rate with FERS was \$1,220.00 and without FERS was \$826.90; and beginning December 2022, the SSA rate with FERS was \$1,326.00 and without FERS was \$898.80.

In a letter dated April 19, 2023, OWCP advised appellant that, effective May 17, 2023, his FECA wage-loss compensation would be offset by his SSA age-related retirement benefits every 28 days, in the amount of \$394.34. Appellant's new net wage-loss compensation payment every 28 days would be \$3,746.48.

On December 14, 2023 OWCP prepared a FERS offset overpayment calculation worksheet wherein it explained the calculation of appellant's SSA/FERS offset overpayment for the period November 1, 2021 through April 22, 2023. It calculated the overpayment by determining the difference between his SSA amount with and without FERS for each period. OWCP then multiplied the daily offset amount by the number of days in each period to find a total overpayment of \$7,111.10.

On December 14, 2023 OWCP issued a preliminary overpayment determination finding that an overpayment of compensation in the amount of \$7,111.10 had been created for the period November 1, 2021 through April 22, 2023 because appellant received FECA wage-loss

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx032. Appellant previously filed a Form CA-1 for a January 19, 2011 employment incident when he was hitting a metal bar with a sledgehammer to loosen it out of the floor while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx266 and accepted it for a lumbar sprain and lumbosacral sprain. It has administratively combined appellant's claims, with OWCP File No. xxxxxx032 serving as the master file.

<sup>4</sup> The case record indicates that appellant's federal retirement coverage was under FERS.

compensation benefits and SSA age-related retirement benefits, without an appropriate offset. It further made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting 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, it 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 January 10, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He disagreed with the fact and amount of the overpayment and requested a waiver of recovery. Appellant also submitted a partially-completed Form OWCP-20 dated January 4, 2024, listing only his monthly income of \$1,326.00 from SSA benefits. No other supporting financial information or documentation was received.

A prerecoupment hearing was held on April 12, 2024. During the hearing, appellant testified that he was not aware of the FERS offset, but had always reported his SSA benefits accurately. He testified that he could pay approximately \$100.00 per month to repay the overpayment and reported that his sources of income were the SSA retirement benefits and FECA wage-loss compensation. Appellant also testified that his spouse was currently working with weekly income of approximately \$600.00. He estimated his monthly expenses to be between \$5,000.00 to \$6,000.00. Appellant further testified that he had "a bunch of assets" and therefore did not likely meet the waiver criteria.

By decision dated June 26, 2024, OWCP's hearing representative finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$7,111.10 for the period November 1, 2021 through April 22, 2023, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. She determined that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation. The hearing representative indicated that the overpayment would be recovered by withholding \$350.00 from his continuing compensation benefit 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 or her federal employment.<sup>5</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>6</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

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

federal service of the employee.<sup>7</sup> FECA Bulletin No. 97-09 provides 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>8</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$7,111.10, for the period November 1, 2021 through April 22, 2023, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset.

In its June 26, 2024 decision, OWCP found that an overpayment of compensation was created for the period November 1, 2021 through April 22, 2023. The overpayment was based on the evidence received from SSA with respect to retirement benefits paid to appellant. The record indicates that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-based retirement benefits. A claimant cannot receive both compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> Consequently, the fact of overpayment has been established.<sup>10</sup>

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to rates of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rate with FERS, and without FERS for periods commencing November 1, 2021 through April 22, 2023. OWCP provided its overpayment calculations for each relevant period based on the information provided by SSA.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$7,111.10 for the period November 1, 2021 through April 22, 2023.

### 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>11</sup>

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<sup>7</sup> 20 C.F.R. § 10.421(d).

<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>9</sup> *See E.M.*, Docket No. 21-1231 (issued April 19, 2023); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>10</sup> *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

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. The information is also used to determine the repayment schedule, if necessary.<sup>14</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>15</sup>

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

The Board finds that OWCP properly denied waiver of recovery of the \$7,111.10 overpayment of compensation.<sup>16</sup>

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment 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.<sup>17</sup> Appellant, however, had the responsibility to provide the appropriate financial information to OWCP.<sup>18</sup>

In its preliminary determination dated December 14, 2023, OWCP explained the importance of providing the completed overpayment questionnaire and supporting financial documentation, 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

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<sup>12</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>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).

<sup>15</sup> *Id.* at § 10.438(b).

<sup>16</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>17</sup> 20 C.F.R. § 10.436.

<sup>18</sup> *Id.* at § 10.438; *see N.J.*, Docket No. 19-1170 (issued January 10, 2020).

waiver of recovery of the overpayment if he failed to furnish the requested information within 30 days. Appellant, however, did not submit sufficient financial information or supporting documentation. As such, 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 equity and good conscience.<sup>19</sup>

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

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides 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 the error is discovered or his 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.<sup>21</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$350.00 from appellant's continuing compensation payments, every 28 days.<sup>22</sup>

OWCP provided appellant a Form OWCP-20 with the December 14, 2023 preliminary overpayment determination. Appellant, however, did not provide a fully completed form or sufficient financial information regarding his income and expenses prior to the final June 26, 2024 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>23</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>24</sup> The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$350.00 from his continuing compensation payments every 28 days.

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<sup>19</sup> *R.M.*, Docket No. 19-1570 (issued June 1, 2020); *G.G.*, Docket No. 19-0684 (issued December 23, 2019).

<sup>20</sup> *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

<sup>21</sup> 20 C.F.R. § 10.441(a).

<sup>22</sup> *L.D.*, Docket No. 19-1423 (issued March 2, 2020).

<sup>23</sup> 20 C.F.R. § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>24</sup> *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).

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$7,111.10, for the period November 1, 2021 through April 22, 2023 for which he was not at fault, as 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 \$350.00 from his continuing compensation payments, every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2024  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board