

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

E.A., Appellant	)	
	)	
and	)	<b>Docket No. 24-0810</b>
	)	<b>Issued: September 26, 2024</b>
U.S. POSTAL SERVICE, SAN FRANCISCO	)	
NETWORK DISTRIBUTION CENTER,	)	
Richmond, CA, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On August 5, 2024 appellant, through counsel, filed a timely appeal from a July 24, 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 found that appellant received an overpayment of compensation in the amount of \$51,788.66 during the period November 1, 2011 through

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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.*

April 24, 2021, 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 \$758.47 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

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

On February 7, 2011 appellant, then a 62-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral shoulder conditions due to factors of his federal employment, including moving heavy furniture and equipment, using the buffing machine, and trash removal. He noted that he first became aware of his condition on December 2, 2010 and realized its relation to his federal employment on January 19, 2011. OWCP accepted the claim for bilateral shoulder and arm sprains, and bilateral incomplete shoulder rotator cuff tears. It paid appellant wage-loss compensation through March 5, 2013. On March 6, 2013 appellant returned to full-time, modified duty.<sup>4</sup> He stopped work again, and OWCP resumed payment of wage-loss compensation on the periodic rolls as of July 26, 2016.

On May 21, 2019 OWCP provided SSA with a FERS/SSA dual benefits form. In a completed dual benefits form dated May 28, 2019, SSA reported that appellant had been in receipt of SSA retirement benefits beginning November 1, 2011, a portion of which was attributable to his federal service. It listed his SSA age-related retirement benefit rates with and without FERS for the period November 2011 through December 2018.<sup>5</sup>

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<sup>3</sup> Docket No. 23-0183 (issued July 27, 2023).

<sup>4</sup> By decision dated March 11, 2015, OWCP granted appellant a schedule award for 10 percent bilateral upper extremity permanent impairment. The period of the award ran for 62.4 weeks for the period December 19, 2014 through February 28, 2016.

<sup>5</sup> Beginning November 2011, the SSA rate with FERS was \$1,154.00 and without FERS was \$392.00. Beginning December 2011, the SSA rate with FERS was \$1,195.00 and without FERS was \$407.00. Beginning January 2012, the SSA rate with FERS was \$1,208.00 and without FERS was \$407.00. Beginning December 2012, the SSA rate with FERS was \$1,229.00 and without FERS was \$413.00. For the period January 2013 through August 2013, "work suspense." Beginning September 2013, the SSA rate with FERS was \$123.90 and without FERS was \$0.00. Beginning October 2013, the SSA rate with FERS was \$1,228.90 and without FERS was \$413.90. Beginning December 2013, the SSA rate with FERS was \$1,246.90 and without FERS was \$419.90. Beginning January 2014, the SSA rate with FERS was \$1,271.90 and without FERS was \$419.90. Beginning July 2014, the SSA rate with FERS was \$1,348.90 and without FERS was \$444.90. Beginning December 2014, the SSA rate with FERS was \$1,371.90 and without FERS was \$452.90. Beginning January 2015, the SSA rate with FERS was \$1,407.90 and without FERS was \$452.90. Beginning January 2016, the SSA rate with FERS was \$1,428.90 and without FERS was \$452.90. Beginning December 2016, the SSA rate with FERS was \$1,433.00 and without FERS was \$454.00. Beginning January 2017, the SSA rate with FERS was \$1,441.00 and without FERS was \$454.00. Beginning December 2017, the SSA rate with FERS was \$1,470.00 and without FERS was \$463.00. Beginning December 2018, the SSA rate with FERS was \$1,511.50 and without FERS was \$475.50.

Effective June 23, 2019, OWCP adjusted appellant's wage-loss compensation to offset his SSA age-related retirement benefits attributable to his federal service.

In a preliminary overpayment determination dated July 15, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$77,651.93, for the period November 1, 2011 through June 22, 2019, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It attached the overpayment calculation worksheet, which noted the overpayment amounts for each period in question. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and advised 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 which support income and expenses. 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 prerecoupment hearing.

On August 2, 2019 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 22, 2019. By decision dated February 6, 2020, OWCP's hearing representative set aside the July 15, 2019 preliminary overpayment determination, and remanded the case for OWCP to recalculate the amount of overpayment, taking into account appellant's periods of partial disability, schedule award, and any change in his receipt of SSA age-related retirement benefits.

OWCP subsequently received an updated FERS/SSA dual benefits form dated June 24, 2020, wherein SSA listed appellant's SSA age-related retirement benefit rates with and without FERS for the period November 2011 through December 2019.<sup>6</sup>

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<sup>6</sup> Beginning November 2011, the SSA rate with FERS was \$1,154.30 and without FERS was \$455.80. Beginning December 2011, the SSA rate with FERS was \$1,195.80 and without FERS was \$472.20. Beginning January 2012, the SSA rate with FERS was \$1,208.50 and without FERS was \$472.20. Beginning December 2012, the SSA rate with FERS was \$1,229.00 and without FERS was \$480.10. Beginning January 2013, appellant was "in work suspense no benefits paid." Beginning September 2013, the SSA rate with FERS was \$124.00 and without FERS was \$0.00. Beginning October 2013, the SSA rate with FERS was \$1,229.00 and without FERS was \$480.10. Beginning December 2013, the SSA rate with FERS was \$1,247.40 and without FERS was \$487.30. Beginning January 2014, the SSA rate with FERS was \$1,272.20 and without FERS was \$487.30. Beginning July 2014, the SSA rate with FERS was \$1,349.50 and without FERS was \$516.90. Beginning December 2014, the SSA rate with FERS was \$1,372.50 and without FERS was \$525.60. Beginning January 2015, the SSA rate with FERS was \$1,408.30 and without FERS was \$525.60. Beginning January 2016, the SSA rate with FERS was \$1,429.00 and without FERS was \$525.60. Beginning December 2016, the SSA rate with FERS was \$1,433.30 and without FERS was \$527.20. Beginning January 2017, the SSA rate with FERS was \$1,441.70 and without FERS was \$527.20. Beginning December 2017, the SSA rate with FERS was \$1,470.50 and without FERS was \$537.70. Beginning December 2018, the SSA rate with FERS was \$1,511.70 and without FERS was \$552.70. Beginning December 2019, the SSA rate with FERS was \$1,535.80 and without FERS was \$561.50.

OWCP subsequently received an updated FERS/SSA dual benefits form dated July 17, 2020, wherein SSA again reported appellant's SSA age-related retirement benefit rates with and without FERS for the period November 2011 through December 2019.<sup>7</sup>

On August 7, 2020 OWCP requested clarification from SSA, noting that the May 28, 2019 and June 24 and July 17, 2020 dual benefits forms reported varying rates for the same period.

By memorandum dated August 24, 2020, SSA clarified that appellant was still receiving SSA age-related retirement benefits, and again provided his SSA age-related retirement benefit rates with and without FERS for the period November 2011 through December 2019.<sup>8</sup>

Appellant retired from federal employment due to disability, effective January 14, 2021.

On February 4, 2021 OWCP requested that SSA provide the amount of SSA age-related retirement benefit rates with and without FERS beginning January 2020.

On March 9, 2021 OWCP subsequently received a completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without FERS offset commencing January 2020.<sup>9</sup> Attached was a copy of the August 24, 2020

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<sup>7</sup> Beginning November 2011, the SSA rate with FERS was \$1,154.30 and without FERS was \$392.90. Beginning December 2011, the SSA rate with FERS was \$1,195.80 and without FERS was \$407.00. Beginning December 2012, the SSA rate with FERS was \$1,229.00 and without FERS was \$413.90. Beginning December 2013, the SSA rate with FERS was \$1,247.40 and without FERS was \$420.10. Beginning December 2014, the SSA rate with FERS was \$1,372.50 and without FERS was \$427.20. Beginning December 2015, the SSA rate with FERS was \$1,408.30 and without FERS was \$427.20. Beginning December 2016, the SSA rate with FERS was \$1,433.30 and without FERS was \$428.40. Beginning December 2017, the SSA rate with FERS was \$1,470.50 and without FERS was \$437.00. Beginning December 2018, the SSA rate with FERS was \$1,511.70 and without FERS was \$449.10. Beginning December 2019, the SSA rate with FERS was \$1,535.80 and without FERS was \$456.30.

<sup>8</sup> Beginning November 2011, the SSA rate with FERS was \$1,154.30 and without FERS was \$392.90. Beginning December 2011, the SSA rate with FERS was \$1,195.80 and without FERS was \$407.00. Beginning January 2012, the SSA rate with FERS was \$1,208.50 and without FERS was \$407.00. Beginning December 2012, the SSA rate with FERS was \$1,229.00 and without FERS was \$413.90. SSA indicated that January through August 2013, a work suspense was in effect. Beginning September 2013, the SSA rate with FERS was \$124.00 and without FERS was \$0.00. Beginning October 2013, the SSA rate with FERS was \$1,229.00 and without FERS was \$413.90. Beginning December 2013, the SSA rate with FERS was \$1,247.40 and without FERS was \$420.10. Beginning January 2014, the SSA rate with FERS was \$1,272.20 and without FERS was \$420.10. Beginning July 2014, the SSA rate with FERS was \$1,349.50 and without FERS was \$420.10. Beginning December 2014, the SSA rate with FERS was \$1,372.50 and without FERS was \$427.20. Beginning January 2015, the SSA rate with FERS was \$1,408.30 and without FERS was \$427.20. Beginning January 2016, the SSA rate with FERS was \$1,429.00 and without FERS was \$427.20. Beginning December 2016, the SSA rate with FERS was \$1,433.30 and without FERS was \$428.40. Beginning January 2017, the SSA rate with FERS was \$1,441.70 and without FERS was \$428.40. Beginning December 2017, the SSA rate with FERS was \$1,470.50 and without FERS was \$437.00. Beginning December 2018, the SSA rate with FERS was \$1,511.70 and without FERS was \$449.10. Beginning December 2019, the SSA rate with FERS was \$1,535.80 and without FERS was \$456.30.

<sup>9</sup> Beginning January 2020, the SSA rate with FERS was \$1,535.80 and without FERS was \$456.30. Beginning December 2020, the SSA rate with FERS was \$1,555.70 and without FERS was \$462.20.

memorandum which provided his SSA age-related retirement benefit rates with and without FERS for the period November 2011 through December 2019.<sup>10</sup>

Based upon the updated information from SSA, OWCP readjusted appellant's wage-loss compensation to reflect the correct FERS/SSA offset, effective April 25, 2021, and that his new four-week FECA benefit after the SSA offset would be \$2,527.95.

In an overpayment calculation worksheet received on November 3, 2021, OWCP provided a detailed recalculation of the overpayment.

In a preliminary overpayment determination dated April 29, 2022, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$57,743.11, for the period November 1, 2011 through April 24, 2021, 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. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method, provided an overpayment action request form, and advised him that he could request a waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP 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 prerecoupment hearing.

In an overpayment action request form dated May 11, 2022, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and waiver of recovery of the overpayment. He also noted his disagreement with the fact and amount of the overpayment. A prerecoupment hearing was held on August 19, 2022.

OWCP subsequently received a partially-completed Form OWCP-20 dated May 25, 2022.

By decision dated November 4, 2022, OWCP's hearing representative finalized the April 29, 2022 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$57,743.11, for the period November 1, 2011 through April 24, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative further found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deducting \$696.52 from appellant's continuing compensation payments, every 28 days.

On November 18, 2022 appellant, through counsel, appealed the November 3, 2022 merit decision to the Board. By decision dated July 27, 2023, the Board affirmed OWCP's November 4, 2022 decision in part, finding that OWCP had established the fact and period of the overpayment. However, the Board also set aside OWCP's November 4, 2022 decision in part, finding that the case was not in posture for decision with regard to the amount of the overpayment. The Board remanded the case for OWCP to recalculate the amount of the overpayment, and issue a new preliminary overpayment determination, along with a new overpayment action request form, a new

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<sup>10</sup> *Supra* note 8.

Form OWCP-20, and instructions to provide supporting financial documentation, followed by a *de novo* decision.

On remand OWCP recalculated the amount of the overpayment. In a February 15, 2024 FERS offset overpayment calculation worksheet, it explained that appellant was paid FECA wage-loss compensation for the period November 1, 2011 through March 5, 2013. However, because appellant returned to full-time work on March 6, 2013 and was paid a schedule award for the period December 19, 2014 through February 28, 2016, no FERS SSA offset was applicable for the period March 6, 2013 through February 28, 2016. OWCP noted that it resumed paying appellant wage-loss compensation for total disability, effective July 26, 2016. It, therefore, found that it had failed to deduct for the SSA FERS offset for the periods November 1, 2011 through March 5, 2013 and July 26, 2016 through June 22, 2019. Based on the updated information provided by SSA, OWCP found that, from November 1 through 30, 2011, appellant received an overpayment of \$753.03; from December 1 through 31, 2011, he received an overpayment of \$806.14; from January 1 through November 30, 2012, he received an overpayment of \$8,851.73; from December 1, 2012 through March 5, 2013, he received an overpayment of \$2,552.79; from July 26 through November 30, 2016, he received an overpayment of \$4,227.38; from December 1 through 31, 2016, he received an overpayment of \$1,026.99; from January 1 through November 30, 2017, he received an overpayment of \$11,157.44; from December 1, 2017 through November 30, 2018, he received an overpayment of \$12,436.07; from December 1, 2018 through June 22, 2019, he received an overpayment of \$7,146.28. This resulted in a total overpayment for the period November 1, 2011 through June 22, 2019 of \$48,957.85.

OWCP further explained in its overpayment calculation worksheet that it began deducting the FERS SSA offset from appellant's continuing wage-loss compensation, effective June 23, 2019, based on incorrect offset amount; and it did not readjust his wage-loss compensation until April 25, 2021. Based on the updated information from SSA, it therefore found that: from June 23 through November 30, 2019, appellant received an overpayment of \$5,639.95; from December 1, 2019 through November 30, 2020, he received an overpayment of \$13,025.18; and from December 1, 2020 through April 24, 2021 he received an overpayment of \$5,227.17. This resulted in a total overpayment for the period June 23, 2019 through April 24, 2021 of \$23,892.30. It further noted that, "[b]ased upon a payment history of the case, OWCP deducted \$13,387.25 listed as Miscellaneous deduction from your compensation checks for the period June 23, 2019 through April 23, 2021." It, therefore found an overpayment for that period of \$10,505.05 (\$23,892.30 - \$13,387.25) and that the total overpayment for the period November 1, 2011 through April 24, 2021 was \$59,462.90 (\$48,957.85 + \$10,505.05). However, as OWCP previously began deducting \$639.52 from appellant's continuing compensation payments as recovery of a prior overpayment determination. It, therefore, found that the \$7,674.34 of prior overpayment deductions would be deducted from the overall SSA FERS overpayment for the period November 1, 2011 through April 24, 2021. The resulting overpayment total for the period November 1, 2011 through April 24, 2021 was \$51,788.66 (\$59,462.90 - \$7,674.24).

In a preliminary overpayment determination dated February 21, 2024, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$51,788.66, for the period November 1, 2011 through April 24, 2021, because it had failed to reduce his wage-loss compensation to offset his SSA age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment

method, provided an overpayment action request form, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP 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 prerecoupment hearing.

On March 5, 2024 appellant requested a prerecoupment hearing and waiver of recovery of the overpayment. A telephonic hearing was held on June 4, 2024.

By decision dated July 24, 2024, OWCP's hearing representative finalized the April 29, 2022 preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$51,788.66, for the period November 1, 2011 through April 24, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. He further found that while appellant was without fault in the creation of the overpayment, waiver of recovery of the overpayment was denied. The hearing representative required recovery of the overpayment by deducting \$758.47 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.<sup>11</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>12</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>13</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 benefits and federal retirement concurrently is a prohibited dual benefit.<sup>14</sup>

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

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$51,788.66 during the period November 1, 2011 through April 24,

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<sup>11</sup> 5 U.S.C. § 8102(a).

<sup>12</sup> *Id.* at § 8116.

<sup>13</sup> 20 C.F.R. § 10.421(d); *see B.J.*, Docket No. 24-0599 (issued July 16, 2024); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>14</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also B.J., id.; N.B.*, Docket No. 18-0795 (issued January 4, 2019).

2021, for which he is without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without appropriate offset.

The Board preliminarily notes that it previously found in its July 27, 2023 decision that appellant received an overpayment of compensation for the period November 1, 2011 through April 24, 2021, for which he was without fault, as he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>15</sup> Therefore, the Board's prior finding regarding the fact and period of the overpayment is not subject to further consideration.

On remand from the Board's prior decision, OWCP recalculated the amount of the overpayment and provided a detailed explanation of its calculations. The Board has reviewed OWCP's calculations and finds that OWCP properly determined that appellant received an overpayment of compensation for the period November 1, 2011 through April 24, 2021 in the amount of \$51,788.66.

### **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.<sup>16</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>17</sup> An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>18</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

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<sup>15</sup> *T.S.*, Docket No. 22-1354 (issued May 1, 2023); *T.C.*, Docket No. 21-0612 (issued December 2, 2021); *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See also* 20 C.F.R. § 501.6(d).

<sup>16</sup> 5 U.S.C. § 8129.

<sup>17</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>18</sup> *Id.* at Chapter 6.400.4.a(3); *see also G.H.*, Docket No. 24-0495 (issued June 20, 2024); *B.M.*, Docket No. 23-0891 (issued January 30, 2024); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).



notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>19</sup>

Section 10.438 of OWCP's 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. The information is also used to determine the repayment schedule, if necessary.<sup>20</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>21</sup>

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

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

The fact that OWCP may have been negligent in the creation of the overpayment does not entitle appellant to waiver of recovery of the overpayment.<sup>22</sup> 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.<sup>23</sup>

In its preliminary overpayment determination, dated February 21, 2024, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. Appellant did not submit a completed Form OWCP-20, or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

Appellant had the responsibility to provide financial information to OWCP but failed to do so.<sup>24</sup> As he did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

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

Section 10.441 of OWCP's regulations provides in pertinent part that, when an overpayment has been made to an individual who is entitled to further payments, the individual

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<sup>19</sup> 20 C.F.R. § 10.437(a)-(b).

<sup>20</sup> *Id.* at § 10.438(a); *G.H.*, *supra* note 18; *B.M.*, *supra* note 18; *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

<sup>21</sup> *Id.* at § 10.438; *D.L.*, Docket No. 20-1522 (issued July 27, 2023).

<sup>22</sup> *See C.B.*, Docket No. 24-0285 (issued April 24, 2024); *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *R.B.*, Docket No. 15-0808 (issued October 26, 2015).

<sup>23</sup> 20 C.F.R. § 10.436.

<sup>24</sup> *Id.* at § 10.438; *C.B.*, *supra* note 22; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

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.<sup>25</sup>

When an individual fails to provide requested information regarding income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>26</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$758.47 from appellant's continuing compensation payments, every 28 days.

As noted above, 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.<sup>27</sup> The Board finds, therefore, that OWCP properly required recovery of the overpayment by deducting \$758.47 from appellant's continuing schedule award payments every 28 days.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$51,788.66, for the period November 1, 2011 through April 24, 2021, 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 \$758.47 from appellant's continuing compensation payments every 28 days.

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<sup>25</sup> 20 C.F.R. § 10.441(a); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

<sup>26</sup> *Supra* note 17 at Chapter 6.500.8c(1) (September 2018).

<sup>27</sup> *B.J.*, *supra* note 13; *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 July 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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