

³ The Board notes that, following the October 13, 2021 decisions, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$23,944.68, for the period March 1, 2017 through March 27, 2021, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$402.14 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 15, 1997 appellant then a 49-year-old telephone mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his low back and knees when he was descending stairs and the edge guard on a stair broke loose causing him to fall while in the performance of duty. OWCP accepted his claim for lumbar sprain, herniated nucleus pulposus at L4-L5, and bilateral knee contusions. Appellant stopped work on May 24, 1997 and did not return. It paid appellant wage-loss compensation on the supplemental rolls from August 30, 2000 through July 13, 2002 and on the periodic rolls commencing July 14, 2002.

On March 9, 2021 OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits form to SSA for completion.

On March 16, 2021 SSA completed the FERS/SSA dual benefits form calculating appellant's SSA age-related retirement benefit rates with FERS offset and without a FERS offset from March 1, 2017 through December 1, 2020. Beginning March 1, 2017, the SSA rate with FERS was \$1,402.80 and without FERS was \$937.30. Beginning September 1, 2017, the SSA rate with FERS was \$1,417.60 and without FERS was \$947.20. Beginning December 1, 2017, the SSA rate with FERS was \$1,445.80 and without FERS was \$966.10. Beginning December 1, 2018, the SSA rate with FERS was \$1,486.30 and without FERS was \$993.10. Beginning December 1, 2019, the SSA rate with FERS was \$1,510.00 and without FERS was \$1,009.00. Beginning December 1, 2020, the SSA rate with FERS was \$1,529.60 and without FERS was \$1,022.00.

On April 8, 2021 OWCP prepared a FERS offset overpayment calculation worksheet wherein it computed a total overpayment amount of \$23,944.68 for the period March 1, 2017 through March 27, 2021. It determined that for the period March 1 through August 31, 2017 appellant received an overpayment in the amount of \$2,823.69; for the period September 1 through November 30, 2017 he received an overpayment in the amount of \$1,411.20; for the period December 1, 2017 through November 30, 2018 he received an overpayment in the amount of \$5,772.21; for the period December 1, 2018 through November 30, 2019 he received an overpayment in the amount of \$5,934.66; for the period December 1, 2019 through November 30, 2020 he received an overpayment in the amount of \$6,045.03; and for the period December 1, 2020 through March 27, 2021 he received an overpayment in the amount of \$1,957.89.

In a preliminary overpayment determination dated April 8, 2021, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$23,944.68 for the period March 1, 2017 through March 27, 2021 because the SSA/FERS offset was not applied to his SSA age-related retirement benefits. 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 payment method and advised 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 and canceled checks, pay slips, and any other records that 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 April 15, 2021 appellant disagreed with the overpayment and indicated that he collected his wife's SSA benefits.

By decision dated June 4, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$23,944.68 for the period March 1, 2017 through March 27, 2021, because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. OWCP further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery of the overpayment by deducting \$536.00 every 28 days from appellant's continuing compensation payments.

On June 8, 2021 OWCP informed appellant that an informal hearing would be held on August 11, 2021 with regard to the April 8, 2021 preliminary overpayment determination.

In a letter dated June 14, 2021, appellant, through counsel, indicated that he requested a prerecoupment hearing with regard to the April 8, 2021 preliminary overpayment determination. He noted that OWCP issued a final overpayment decision on June 4, 2021, in error, notwithstanding the request for a hearing.

A prerecoupment hearing was held before a representative of OWCP's Branch of Hearings and Review on August 11, 2021.

On August 17, 2021 counsel asserted that appellant switched from the Civil Service Retirement System (CSRS) to FERS in approximately 1999 and a statement of accepted facts (SOAF) confirmed that appellant stopped work on April 15, 1997 and did not return. Counsel indicated that a minimum of 40 quarters must be paid into Social Security to become eligible for SSA benefits and it was impossible for appellant to have done that under these circumstances. He concluded that appellant was not receiving his own SSA benefits during the period in question.

In a Form OWCP-20 dated August 17, 2021, appellant reported that his monthly income was \$2,915.00, he noted \$1,307.00 in SSA benefits, \$1,608.57 in FECA benefits, and \$150.00 of Department of Veterans Affairs benefits resulting in a total monthly income of \$5,980.57. He reported expenses totaling \$3,275.00. Appellant indicated monthly expenses of \$200.00 for rent or mortgage, \$1,500.00 for food, \$250.00 for clothing, \$275.00 for utilities, \$1,050.00 for other expenses, an installment debt of \$1,875.00, and \$1,186.16 for various creditors. He further noted cash on hand of \$150.00, a checking account balance of \$9,257.00, and savings account balance of \$12,264.00. In an attached statement, appellant indicated that he was scheduled to pay \$4,800.00 for electrical work, \$3,850.00 for an impact door, \$3,800.00 for a sprinkler system, and

\$2,000.00 for grass in September. He noted that the prior month, he spent \$6,200.00 for a lanai, \$450.00 for dirt, \$790.00 for a tree, \$405.00 for cabinets, and \$265.00 for equipment rental. Appellant submitted no supporting financial documentation.

By decision dated October 13, 2021, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$23,944.68 for the period March 1, 2017 through March 27, 2021, because OWCP failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. OWCP's hearing representative further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$402.14 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.⁴ 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.⁵

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.⁶ 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 benefit.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which he was without fault, because he concurrently received FECA wage-loss compensation 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 also receiving SSA age-related retirement benefits that were attributable to his federal service without appropriate offset. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

the same period without an appropriate offset.⁸ OWCP paid appellant wage-loss compensation on the supplemental rolls from August 30, 2000 through July 13, 2002 and on the periodic rolls commencing July 14, 2002. The information provided by SSA establishes that appellant also received SSA age-related retirement benefits that were attributable to his federal service commencing March 1, 2017, without an appropriate offset. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.⁹

The Board further finds, however, that the case is not in posture for decision with regard to the period and amount of the overpayment. OWCP received documentation from SSA with respect to appellant's 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 specific periods March 1, 2017 through March 27, 2021. Counsel, however, indicated that a minimum of 40 quarters must be paid into Social Security to become eligible for SSA benefits and it was impossible for appellant to have done that under these circumstances. He concluded that appellant was not receiving his own SSA age-related retirement benefits during the period in question. Thus, it remains unclear whether the information presented by SSA was accurate.

Accordingly, the Board finds that the case must be remanded to OWCP.¹⁰ On remand, OWCP shall obtain additional information from SSA to explain whether appellant was in receipt of his own SSA age-related retirement benefits. OWCP shall then recalculate the period and amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The

⁸ 20 C.F.R. § 10.421(d); *supra* note 6; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, *supra* note 6.

⁹ *Id.*

¹⁰ *See P.W.*, Docket No. 20-1131 (issued November 30, 2022).

¹¹ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

Board further finds, however that the case is not in posture with regard to the period and amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.¹²

Issued: January 31, 2025
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.