

<sup>2</sup> The Board notes that following the August 17, 2023 decision, appellant submitted additional evidence to OWCP and the Board. 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.*

statement (Form EN-1032) as requested; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$138,588.08, for the periods July 31, 2010 through February 9, 2013 and March 23, 2013 through December 3, 2022, 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; (3) whether OWCP properly denied waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$243.26 from appellant's continuing compensation payments, every 28 days.

### **FACTUAL HISTORY**

On June 17, 2009 appellant, then a 65-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2009, he sustained a right knee injury when he slipped on an icy ramp and struck his right knee on a metal railing while in the performance of duty. OWCP accepted the claim for contusion of the right knee and lower leg. It later expanded its acceptance of appellant's claim to include a right medial meniscal tear. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 31, 2010, and on the periodic rolls, effective October 24, 2010.<sup>3</sup>

OWCP periodically requested that appellant submit EN-1032 forms, which solicited information regarding his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.<sup>4</sup>

On March 1, 2013 OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity in addition to three percent permanent impairment awarded under a prior claim.<sup>5</sup> The award ran for 5.76 weeks from February 10 through March 22, 2013.

On November 1, 2022 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits form. It requested appellant's SSA age-related retirement benefit rates with and without FERS.

On December 15, 2022 OWCP received a completed dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with FERS and without FERS. Beginning January 2010, the SSA rate with FERS was \$1,342.20, and without FERS was \$313.80; beginning December 2010, the SSA rate with FERS was \$1,342.20 and without FERS was \$313.80; beginning January 2011, the SSA rate with FERS was \$1,365.80 and without FERS was \$313.80; beginning December 2011, the SSA rate with FERS was \$1,414.90 and without FERS

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<sup>3</sup> Appellant separated from the employing establishment effective September 30, 2011.

<sup>4</sup> By notice dated September 21, 2012 and finalized November 7, 2012, OWCP reduced appellant's wage-loss compensation under 5 U.S.C. §§ 8106 and 8115 based on his ability to perform the constructed position of case aide, Department of Labor, *Dictionary of Occupational Titles* (DOT) #195.367-101.

<sup>5</sup> Under OWCP File No. xxxxxx190, OWCP accepted that appellant sustained hammertoes of the feet in the performance of duty on or before July 29, 1991. OWCP has not administratively combined appellant's claims.

was \$325.00; beginning December 2012, the SSA rate with FERS was \$1,438.90 and without FERS was \$330.50; beginning December 2013, the SSA rate with FERS was \$1,460.40 and without FERS was \$335.40; beginning December 2014, the SSA rate with FERS was \$1,485.20 and without FERS was \$341.10; beginning December 2016, the SSA rate with FERS was \$1,489.60 and without FERS was \$342.10; beginning December 2017, the SSA rate with FERS was \$1,519.30 and without FERS was \$348.90; beginning January 2018, the SSA rate with FERS was \$1,538.50 and without FERS was \$348.90; beginning December 2018, the SSA rate with FERS was \$1,581.50 and without FERS was \$358.60; beginning December 2019, the SSA rate with FERS was \$1,606.80 and without FERS was \$364.30; beginning January 2020, the SSA rate with FERS was \$1,606.80 and without FERS was \$372.30; beginning December 2020 the SSA rate with FERS was \$1,627.60 and without FERS was \$377.10; beginning December 2021 the SSA rate with FERS was \$1,723.60 and without FERS was \$399.30; and beginning December 2022 the SSA rate with FERS was \$1,873.50 and without FERS was \$434.00.

OWCP completed a FERS offset overpayment calculation worksheet on December 16, 2022. It used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods. OWCP found that, for the period July 31 through November 30, 2010, appellant received an overpayment in the amount of \$4,170.10; for the period December 1 through 31, 2010, appellant received an overpayment in the amount of \$1,051.00; for the period January 1 through November 30, 2011, appellant received an overpayment in the amount of \$11,583.60; for the period December 1, 2011 through November 30, 2012, appellant received an overpayment in the amount of \$13,150.64; for the period December 1, 2012 through February 9, 2013 appellant received an overpayment in the amount of \$2,594.39; for the period March 23 through November 30, 2013, appellant received an overpayment in the amount of \$9,244.80; for the period December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$13,537.07; for the period December 1, 2014 through November 30, 2016, appellant received an overpayment in the amount of \$27,571.49; for the period December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$13,807.82; for the period December 1 through 31, 2017, appellant received an overpayment in the amount of \$1,196.12; for the period January 1 through November 30, 2018, appellant received an overpayment in the amount of \$13,098.65; for the period December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$14,715.11; for the period December 1 through 31, 2019, appellant received an overpayment in the amount of \$1,269.80; and for the period January 1 through October 10, 2020, appellant received an overpayment in the amount of \$11,558.19. OWCP totaled these amounts to equal \$138,548.78. It noted that it had applied the SSA/FERS offset to appellant's wage-loss compensation commencing October 11, 2020. For the period October 11, 2020 through December 3, 2022, OWCP deducted a total of \$33,161.16 from appellant's continuing compensation. As the appropriate offset for that period was \$33,200.46, appellant had received an additional \$39.30 overpayment for the period October 11, 2020 through December 3, 2022. OWCP added the \$138,548.78 and \$39.30 overpayments to total \$138,588.08.

On December 16, 2022 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$138,588.08, for the periods July 31, 2010 through February 9, 2013 and March 23, 2013 through December 3, 2022, because the SSA/FERS offset was not applied to payments for these periods. It determined that appellant 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 waiver of recovery of the overpayment. It requested supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP further notified him that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence, or a prerecoupment hearing.

On December 23, 2022 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He also requested waiver of recovery of the overpayment. In a completed Form OWCP-20, appellant reported monthly income totaling \$4,090.92, and monthly expenses totaling \$3,803.00. He indicated that he had no funds in bank accounts or other monetary assets. Appellant also submitted financial documentation.

On January 17, 2023 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous 15 months and that a Form EN-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed form and return it within 30 days or his benefits would be suspended. OWCP mailed the notice to appellant's last known address of record. No response was received within the time allotted.

By decision dated March 1, 2023, OWCP suspended appellant's wage-loss compensation benefits effective that date, due to his failure to submit the Form EN-1032, as requested. It advised that, if he completed and returned the enclosed copy of the Form EN-1032, his compensation benefits would be restored retroactively to the date they were suspended.

A telephonic prerecoupment hearing on the overpayment issue was held before an OWCP hearing representative on June 7, 2023.

By decision dated August 17, 2023, OWCP's hearing representative finalized the December 16, 2022 preliminary overpayment determination, find that appellant received an overpayment of compensation in the amount of \$138,588.08 for the periods July 31, 2010 through February 9, 2013 and March 23, 2013 through December 3, 2022, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The hearing representative found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. Due to appellant's age and life expectancy, the hearing representative compromised the amount of the overpayment from \$138,588.08 to \$60,060.00. He required recovery of the overpayment by deducting \$243.26 from appellant's continuing compensation payments every 28 days.

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

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>6</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>7</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>8</sup>

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

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective March 1, 2023, due to his failure to submit a Form EN-1032, as requested.

On January 17, 2023 OWCP provided appellant with a Form EN-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The Board has held that, absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.<sup>9</sup> The presumption is commonly referred to as the "mailbox rule."<sup>10</sup> The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable. Appellant, however, did not submit a completed Form EN-1032 prior to the March 1, 2023 OWCP decision suspending his benefits. He was receiving wage-loss compensation benefits, and he was, therefore, required to complete the Form EN-1032. Thus, the Board finds that OWCP properly suspended his wage-loss compensation benefits, effective March 1, 2023, pursuant to 20 C.F.R. § 10.528.<sup>11</sup>

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<sup>6</sup> 5 U.S.C. § 8106(b).

<sup>7</sup> 20 C.F.R. § 10.528.

<sup>8</sup> *Id.*; see also *id.* at § 10.525.

<sup>9</sup> *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *R.L.*, Docket No. 20-0186 (issued September 14, 2020); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Claudia J. Whitten*, 52 ECAB 483 (2001).

<sup>10</sup> *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>11</sup> See *W.P.*, Docket No. 23-0306 (issued August 28, 2023); *B.F.*, Docket No. 22-0585 (issued October 20, 2022); *W.L.*, Docket No. 18-1051 (issued March 24, 2021); *M.W.*, Docket No. 15-0507 (issued June 18, 2015); *James A. Igo*, 49 ECAB 189 (1997).

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8102(a) of FECA<sup>12</sup> 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>13</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>14</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>15</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>16</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$138,588.08, for the periods July 31, 2010 through February 9, 2013 and March 23, 2013 through December 3, 2022, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

A claimant cannot receive both FECA compensation for wage loss and SSA age-related benefits attributable to federal service for the same period without an appropriate offset.<sup>17</sup> The information provided by SSA establishes that appellant received SSA age-related retirement benefits that were attributable to federal service during the periods July 31, 2010 through February 9, 2020 and March 23 through December 3, 2022. The case record establishes that OWCP paid appellant wage-loss compensation for the same periods; however, no appropriate offset was taken. Thus, OWCP has established fact of overpayment.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with

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<sup>12</sup> *Supra* note 1.

<sup>13</sup> 5 U.S.C. § 8102(a).

<sup>14</sup> *Id.* at § 8116.

<sup>15</sup> 20 C.F.R. § 10.421(d); *see D.C.*, Docket No. 23-0796 (issued October 19, 2023); *M.D.*, Docket No. 22-1391 (issued June 20, 2023); *P.M.*, Docket No. 22-1059 (issued April 28, 2023); *T.T.*, Docket No. 20-1257 (issued July 29, 2022); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>16</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see S.R.*, Docket No. 21-0492 (issued March 23, 2022); *L.E.*, Docket No. 22-0203 (issued March 17, 2023); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>17</sup> 5 U.S.C. § 8116(d)(2); *see D.W.*, Docket No. 22-0493 (issued March 13, 2023); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

regard to appellant's SSA age-related retirement benefit rates that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS, and without FERS, for specific periods commencing January 2010 through December 2022. OWCP provided its overpayment calculations for each relevant period based on SSA's dual benefits form. The Board has reviewed these calculations and finds that OWCP properly determined an overpayment of compensation in the amount of \$138,588.08.

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

Section 8129 of FECA provides that an overpayment must be recovered 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>18</sup>

Recovery of an overpayment will defeat the purpose of FECA when 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>19</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>20</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>21</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>22</sup>

Recovery of an overpayment is 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>23</sup>

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<sup>18</sup> 5 U.S.C. § 8129.

<sup>19</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>20</sup> *Id.* at Chapter 6.400.4a(3); *M.D. (M.D.)*, Docket No. 22-0189 (issued March 2, 2023); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

<sup>21</sup> *See id.* at Chapter 6.400.4a(2).

<sup>22</sup> *Id.* at Chapter 6.400.4b(3).

<sup>23</sup> 20 C.F.R. § 10.437(a)(b).

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

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

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>24</sup>

In a completed Form OWCP-20, appellant reported monthly income totaling \$4,090.92, and monthly expenses totaling \$3,803.00. As his monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses.<sup>25</sup>

Additionally, the evidence does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has not submitted evidence to substantiate that he would experience severe financial hardship in attempting to repay the debt, or that in reliance on such payment he gave up a valuable right or changed his position for the worse. Therefore, OWCP properly found that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>26</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 4**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of the regulations provides:

“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 circumstances of the individual and any other relevant factors, so as to minimize any hardship.”<sup>27</sup>

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<sup>24</sup> *Id.* at § 10.436.

<sup>25</sup> *R.G.*, Docket No. 23-0595 (issued September 21, 2023); *J.C.*, Docket No. 19-0122 (issued June 11, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>26</sup> *R.G.*, *id.*; *M.D. (M.D.)*, *supra* note 20; *N.J.*, *supra* note 20; *V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>27</sup> 20 C.F.R. § 10.441.



#### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$243.26 from appellant's continuing compensation payments, every 28 days.

In requiring recovery, OWCP explained how it considered the factors set forth at 20 C.F.R. § 10.441(a) in setting the amount of repayment from continuing compensation benefits to minimize hardship, while liquidating the debt, as appellant had financial resources sufficient for more than ordinary needs.<sup>28</sup> Thus, it did not abuse its discretion in setting the rate of recovery.<sup>29</sup> The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$243.26 every 28 days.

#### **CONCLUSION**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective March 1, 2023, due to his failure to submit a Form EN-1032 as requested. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$138,588.08, for the periods July 31, 2010 through February 9, 2013 and March 23, 2013 through December 3, 2022, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. Additionally, the Board finds that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP properly required recovery of the overpayment by deducting \$243.26 from appellant's continuing compensation payments, every 28 days.

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<sup>28</sup> *D.H.*, Docket No. 25-0091 (issued December 12, 2024); *A.N.*, Docket No. 23-0983 (issued January 10, 2024); *P.S.*, Docket No. 21-0859 (issued May 12, 2023); *D.S.*, Docket No. 18-1447 (issued July 22, 2019).

<sup>29</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1 and August 17, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 21, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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