

loss compensation 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 \$400.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior order and decisions are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on July 8, 1988 appellant, then a 30-year-old distribution clerk, sustained a tear of the sagittal band of the right second finger and complex regional sympathetic pain syndrome, Type I, of the right hand. He stopped work on August 21, 1988. Appellant subsequently began working as a lens grinder in February 1994. OWCP reduced his compensation effective February 18, 1994 based on its finding that his actual earnings as a lens grinder fairly and reasonably represented his wage-earning capacity. It paid appellant wage-loss compensation on the periodic rolls based on his loss of wage-earning capacity (LWEC). OWCP subsequently received a notice of personnel action (Standard Form (SF)-50) which indicated that appellant had received a career appointment with the employing establishment on January 9, 1984. The remainder of the form is illegible.

On January 9, 2023, OWCP sent a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to SSA for completion. In a response dated February 28, 2023, SSA advised that appellant's SSA rate with FERS effective August 2022 was \$1,098.90 and without FERS was \$262.80. It provided that effective December 2022 his SSA rate with FERS was \$1,194.40 and without FERS was \$285.70.

On March 8, 2023, OWCP completed a FERS offset overpayment calculation form. It calculated the amount that it should have offset from appellant's compensation for each period from August 1, 2022 through February 25, 2023. OWCP found that he had received an overpayment of \$3,362.76 for the period August 1 through November 30, 2022, and an overpayment of \$2,606.27 for the period December 1, 2022 through February 25, 2023. Based on these figures, it calculated a total overpayment amount of \$5,969.03.

On May 1, 2023, OWCP notified appellant of its preliminary overpayment determination that he had received a \$5,969.03 overpayment of compensation for the period August 1, 2022 through February 25, 2023 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation, without an appropriate offset. It set forth its calculation of the overpayment amount and further advised him of its preliminary determination 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. Additionally, it provided an overpayment action request form and notified him

³ *Order Remanding Case*, Docket No. 09-61 (issued September 8, 2009); Docket No. 10-491 (issued October 18, 2010); Docket No. 12-265 (issued October 19, 2012); Docket No. 24-0070 (issued March 5, 2024).

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 May 8, 2023, appellant requested a final decision based on the written evidence. In an undated Form OWCP-20, he listed assets totaling \$5,000.00, monthly income totaling \$6,424.57, and monthly expenses totaling \$5,125.00.

On May 11, 2023, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

In a Form OWCP-20 dated July 6, 2023, appellant listed monthly income of \$7,328.09, monthly expenses of \$6,876.03, and assets of \$750.00.

A telephonic prerecoupment hearing was held on August 16, 2023. Appellant offered to pay \$400.00 per month to repay the overpayment.

By decision dated October 16, 2023, OWCP's hearing representative finalized the May 1, 2023 preliminary overpayment determination. She found that appellant had received a \$5,969.03 overpayment of compensation for the period August 1, 2022 through February 25, 2023 for which he was without fault because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative denied waiver of recovery of the overpayment as appellant did not require substantially all his income to meet ordinary and necessary living expenses. She required recovery of the overpayment by deducting \$400.00 from appellant's continuing compensation payments every 28 days.

Appellant appealed to the Board. By decision dated March 5, 2024, the Board reversed the October 16, 2023 decision.⁴ The Board found that the evidence of record was insufficient to establish that appellant was enrolled in FERS.

Subsequently, the employing establishment submitted a legible copy of a June 1, 1991 SF-50 showing that appellant was covered by FERS for his retirement plan.

On May 29, 2024, OWCP notified appellant of its preliminary determination that he had received a \$5,969.03 overpayment of compensation for the period August 1, 2022 through February 25, 2023, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It set forth its calculation of the overpayment amount, and further advised him of its preliminary determination that he was with fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method. 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.

In an overpayment action request form dated June 5, 2024, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. In a second request dated June 10, 2024, he requested a telephonic prerecoupment hearing and

⁴ Docket No. 24-0070 (issued March 5, 2024).

disagreed that the overpayment occurred as alleged. Appellant suggested that, if he had to repay an overpayment, OWCP should deduct \$400.00 per month from his continuing compensation payments.

In a Form OWCP-20 dated June 10, 2024, appellant reported total monthly income of \$7,559.86 and total monthly expenses of \$7,247.09. He also reported assets totaling \$79,662.09.

In a Form OWCP-20 dated July 2, 2024, appellant reported the same total monthly income and total monthly expenses, but listed assets totaling \$80,416.09. He asserted that repaying the overpayment would create a hardship as he was supporting his mother, who was in a nursing home.

A telephonic hearing was held on September 13, 2024. Counsel asserted that the overpayment occurred due to the fault of OWCP and questioned why it took years to decide regarding the overpayment.

By decision dated November 19, 2024, OWCP's hearing representative finalized the May 29, 2024 preliminary overpayment determination. She found that appellant had received a \$5,969.03 overpayment for the period August 1, 2022 through February 25, 2023, for which he was without fault, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. The hearing representative denied waiver of recovery of the overpayment and required recovery of the overpayment by deducting \$400.00 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.⁵ 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.⁶

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 benefits that are attributable to the employee's federal service.⁷ 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.⁸

⁵ 5 U.S.C. § 8102.

⁶ *Id.* at § 8116.

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

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023, 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.

OWCP paid appellant wage-loss compensation for an LWEC on the periodic rolls beginning February 18, 1994. He received SSA age-related retirement benefits beginning August 2022. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA age-related retirement benefits attributable to federal service.⁹ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to his federal service and no appropriate offset was made. Accordingly, the Board finds that fact of overpayment has been established.¹⁰

To determine the amount of the overpayment, the portion of SSA age-related retirement benefits attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA age-related retirement benefit rates with FERS and without FERS from August 2020 through December 2022. OWCP provided its calculations for each relevant period based on SSA's dual benefits form and determined that appellant received an overpayment in the amount of \$5,969.03. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$5,969.03 for the period August 1, 2022 through February 25, 2023.¹¹

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.¹² The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹³

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

⁹ *Supra* note 7; *see F.K.*, Docket No. 20-1609 (issued June 24, 2021); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁰ *See L.K.*, Docket No. 20-1574 (issued June 23, 2021); *S.H.*, Docket No. 20-1157 (issued December 23, 2020).

¹¹ *See H.S.*, Docket No. 22-1040 (issued May 12, 2023); *J.S.*, Docket No. 22-0369 (issued June 7, 2022); *N.B.*, Docket No. 20-0727 (issued January 26, 2021); *L.L.*, Docket No. 18-1103 (issued March 5, 2019).

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see M.C.*, Docket No. 19-0699 (issued February 12, 2020).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁴ 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.¹⁵

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 recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶

ANALYSIS -- ISSUE 2

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 recovery is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷ In order to establish that recovery of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses, and that his assets do not exceed the established limit as determined by OWCP procedures.¹⁸

In an updated Form OWCP-20 dated July 2, 2024, appellant reported total assets of \$80,416.09. As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual, or \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent.¹⁹ Because appellant's assets exceed the allowable resource base, the Board finds that appellant has not established that waiver of recovery would defeat the purpose of

¹⁴ 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).

¹⁵ *Id.* at § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(b).

¹⁷ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁸ *Supra* note 14 at § 10.436.

¹⁹ *Supra* note 15.

FECA.²⁰ Accordingly, it is not necessary for OWCP to consider whether he needs substantially all of his current income to meet ordinary and necessary living expenses.²¹

The Board also finds that appellant has not established that he was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. Appellant has not shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that he has relinquished a valuable right, or changed his position for the worse in reliance on the payments which created the overpayment.²²

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.²³

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁴

Section 10.441 of OWCP's regulations²⁵ 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 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.²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$400.00 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

²⁰ See *D.H.*, Docket No. 25-0091 (issued December 12, 2024); *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

²¹ *Id.*

²² See *B.C.*, Docket No. 19-0629 (issued June 2, 2020); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²³ *S.W.*, *supra* note 20.

²⁴ *Id.* at § 10.441; see *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²⁵ *Id.* at § 10.441(a).

²⁶ *Id.*; see *L.G.*, Docket No. 19-1274 (issued July 10, 2020).

more than ordinary needs.²⁷ Thus, it did not abuse its discretion in setting the rate of recovery.²⁸ The Board therefore finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$400.00 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,969.03 for the period August 1, 2022 through February 25, 2023, 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 repayment of the overpayment by deducting \$400.00 from his continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.²⁹

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

²⁷ See *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).

²⁸ See *A.N.*, *id.*; *P.S.*, *id.*; *T.G.*, Docket No. 17-1989 (issued June 5, 2018); *M.D.*, Docket No. 11-1751 (issued May 7, 2012).

²⁹ 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.