

FACTUAL HISTORY

On February 28, 2000 appellant, then a 51-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her wrist, shoulder, back and neck in the performance of duty on February 14, 2000. She indicated that she was assisting a student nurse with patient care and felt a sharp pain. On August 31, 2000 OWCP accepted the claim for cervical strain with radiculopathy.² As of June 16, 2002, appellant began receiving compensation for total disability. The record indicates that she briefly returned to a light-duty position on March 17, 2003 and then stopped working as of April 3, 2003. Appellant again received compensation for total disability.

OWCP periodically sent appellant an EN-1032 form requesting information with respect to employment, dependents and receipt of other benefits. On EN-1032 forms signed on March 27, 2007, April 10, 2008 and April 20, 2009, appellant responded “yes” to a question regarding receipt of Social Security Administration (SSA) benefits. She completed an EN-1032 form dated May 6, 2010 and reported that she received SSA benefits “[un]til Oct[ober] 2009, then cancelled.” On this form appellant also reported the same information for OPM disability retirement.

On June 18, 2012 OWCP requested information from SSA regarding benefits received by appellant. In a response received on August 9, 2012, SSA indicated that he received “disability benefits” from January 2004 to April 2010. A separate form reported effective “5/10” an SSA rate with Federal Employee Retirement System (FERS) of \$1,658.20 and \$848.40 without FERS. The rates as of December 2011 were reported as \$1,717.80 and \$878.90 respectively. OWCP completed a fiscal memorandum with calculations as to an overpayment of compensation from May 1, 2010 to July 28, 2012. The calculations indicated that the monthly offset was the difference between SSA’s rate with FERS and without FERS, resulting in a \$22,122.50 overpayment for the period May 1, 2010 to July 28, 2012.

By letter dated August 14, 2012, OWCP advised appellant that her continuing compensation would be reduced. It explained that the portion of SSA benefits attributable to federal employment service required an offset of her compensation benefits. In a letter dated August 21, 2012, OWCP advised appellant of a preliminary determination that an overpayment of \$22,122.50 was created. It noted its August 14, 2012 letter and stated that appellant had received an incorrect amount of compensation since the offset for SSA benefits had not been deducted. According to OWCP, appellant was at fault in creating the overpayment. It enclosed an overpayment recovery questionnaire (OWCP-20) and advised appellant that she must submit the completed form with supporting financial documents within 30 days.

By decision dated September 24, 2012, OWCP found that an overpayment of \$22,122.50 was created. It found that appellant was at fault as she had made an incorrect statement as to a material fact which she knew or should have known was incorrect, and failed to provide information she knew or should have known to be material. In addition, OWCP indicated that

² This is the only formal notification of acceptance in the record. Appellant has received treatment for other conditions, including her right shoulder with arthroscopic surgery on August 29, 2006, but it is not clear from the record what specific conditions may have been accepted as employment related.

the overpayment would be recovered by deducting \$580.00 from appellant's continuing compensation every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service and that, if an employee receives SSA benefits based on federal service, his or her compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.³

FECA Bulletin No. 97-09 notes that there is a distinction between SSA disability benefits and SSA benefits based on age and years of federal service.⁴ There is no deduction from FECA benefits for SSA disability benefits, as in that case SSA makes a deduction from SSA disability benefits for FECA benefits paid. According to FECA Bulletin No. 97-09, the possibility of dual benefits occurs when the claimant is at least 62 years old, had FERS retirement and is paid benefits based on age by SSA. The offset is that portion of SSA benefits attributable to federal service.⁵

ANALYSIS -- ISSUE 1

In the present case, the record indicates that appellant had received SSA benefits while receiving compensation for wage loss. The limited evidence provided by SSA, however, was not sufficient to properly adjudicate the overpayment issues raised in this case. As noted above, for the purposes of determining a dual benefit there is a clear distinction between SSA disability benefits and SSA benefits based on age. The statement from the SSA indicated that appellant had been receiving "disability" benefits from January 2004. It is not clear from the record whether appellant began receiving SSA benefits based on age as of "May 2010" and if so, the specific date of the change. OWCP used a date of May 1, 2010 as the beginning of the overpayment period, but the record indicated that appellant did not turn 62 years of age until May 23, 2010. As noted in FECA Bulletin No. 97-09, a claimant is eligible to receive SSA disability until age 65,⁶ so it cannot be assumed that SSA disability ceased at age 62 in this case.

The case will therefore be remanded to OWCP to secure more detailed information from SSA regarding the benefits paid to appellant. The nature of the benefits, the specific period paid, the amounts paid and other relevant information should be clarified. OWCP can then make a proper determination as to whether there is an overpayment, and if so, the period and amount of the overpayment. After such further development as OWCP deems necessary, it should issue an appropriate decision. In view of the Board's findings, the fault and recovery issues will not be addressed at this time.

³ 5 U.S.C. § 8116(d). See also *L.L.*, Docket No. 12-1724 (issued March 26, 2013); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e) (June 2009).

⁴ FECA Bulletin No. 97-09 (issued February 23, 1997).

⁵ *Id.*

⁶ *Id.*

CONCLUSION

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development of the evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 24, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board