

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

C.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
CANANDIAGUA VETERANS MEDICAL)
CENTER, Canandaigua, NY, Employer)

Docket No. 16-0784
Issued: July 21, 2016

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 10, 2016 appellant filed a timely appeal of a January 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP properly reduced appellant's compensation to reflect the offset for the federal employment portion of her social security retirement benefits.

On appeal appellant contends that OWCP erred in reducing her compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 9, 2012 appellant, then a 64-year-old health science specialist, filed an occupational disease claim (Form CA-2) alleging that on July 5, 2012 she first became aware that her asthma had been aggravated by dust caused by construction in her work area. She did not stop work and was relocated to another location until construction was done. OWCP accepted the claim for asthma, as well as appellant's later claim for a recurrence of disability (Form CA-2a) beginning May 10, 2014.

Appellant received supplemental roll benefits as of May 10, 2014 until she was placed on the periodic rolls as of November 16, 2014.

In a January 6, 2016 Federal Employees' Retirement System (FERS) and Social Security Administration (SSA) Dual Benefits Calculations worksheet, SSA noted appellant's receipt of SSA benefits and provided her SSA rate with FERS and SSA rate without FERS from May 2014 through December 2015. Effective December 2014 and December 2015, it noted her current monthly SSA rate with FERS was \$2,220.10 and her SSA rate without FERS was \$2,085.10, a difference of \$135.00.

By decision dated January 28, 2016, OWCP informed appellant that her compensation payments would be reduced by \$124.62. It explained that SSA benefits were paid monthly or 12 payments per year while FECA benefits were paid every 28 days or 13 payments per year. OWCP then calculated the monthly SSA offset by dividing \$135.00 (the difference between \$2,220.10 and \$2,085.10) by 12/13 resulting in an offset amount of \$124.62. It also advised appellant that the annual increases in SSA benefits would result in an increased offset for her FECA benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.²

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.³ If an employee receives SSA benefits based on federal service, her compensation benefits shall be reduced by the amount of SSA benefits attributable to her federal service.

OWCP procedures provide that, while SSA benefits are payable concurrently with FECA benefits, the following restrictions apply: in disability cases, FECA benefits will be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service.⁴ The offset of FECA benefits by SSA benefits attributable to employment under FERS is calculated as

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ 5 U.S.C. § 8116(d). *See N.R.*, Docket No. 12-1853 (issued June 10, 2013).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e)(2) (January 1997); Chapter 2.1000.11 (February 1995).

follows: where a claimant has received SSA benefits, OWCP will obtain information from SSA on the amount of the claimant's benefits beginning with the date of eligibility to FECA benefits. SSA will provide the actual amount of SSA benefits received by the claimant/beneficiary. It will also provide a hypothetical SSA benefit computed without FERS covered earnings. OWCP will then deduct the hypothetical benefit from the actual benefit to determine the amount of benefits which are attributable to federal service and that amount will be deducted from FECA benefits to obtain the amount of compensation payable.⁵

ANALYSIS

OWCP accepted appellant's claim for asthma. Appellant received compensation benefits on the periodic rolls as of November 16, 2014. By decision dated January 28, 2016, OWCP reduced her wage-loss compensation to reflect the offset of FERS on her SSA benefits. As noted above, FECA benefits must be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service. As appellant was in receipt of compensation benefits on the periodic rolls, it is OWCP's burden to justify reduction.

The Board finds that OWCP has met its burden to justify reduction of appellant's compensation benefits. The SSA provided the SSA rate with FERS and the hypothetical SSA rate without FERS. The difference between the amounts must be deducted from FECA benefits, as noted above. Based on the information provided by the SSA, OWCP determined that \$124.62 should be deducted from appellant's continuing wage-loss compensation. No contrary evidence was presented.

On appeal appellant argues that OWCP erred in reducing her compensation benefits based on her SSA benefits without FERS. She argues that SSA included her part-time earnings for a nonfederal employer when it calculated her FERS offset as she worked for both the employing establishment and a nonfederal employer at the same time. Appellant also contends that the January 28, **2016** decision was invalid as it contained no appeal rights.

The Board finds that appellant's arguments do not establish that OWCP incorrectly reduced her compensation. Appellant has submitted no evidence showing that SSA incorrectly included wages from a nonfederal employer in its FERS offset calculation as claimed. While she is correct that the January 28, **2016** decision contained no appeal rights, appellant did perfect her appeal with the Board and appealed this decision on March 25, 2016 to the Board thus has not been prejudiced by not receiving her appeal rights. Therefore, OWCP's failure to enclose appeal rights constitutes harmless error.⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁵ See *W.C.*, Docket No. 15-1280 (issued November 13, 2015).

⁶ See *Dorothy A. Noval*, Docket No. 93-2351 (issued May 15, 1995).

CONCLUSION

The Board finds that OWCP properly reduced appellant's compensation to reflect the offset for her federal employment portion of her social security retirement benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 28, 2016 is affirmed.

Issued: July 21, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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