



## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$537.41 for the period March 1 through August 20, 2016; (2) whether OWCP properly found appellant at fault in the creation of the overpayment; and (3) whether OWCP properly determined that the overpayment would be recovered by withholding \$537.41 from appellant's continuing compensation.

## **FACTUAL HISTORY**

Appellant, a 66-year-old former supervisory material expediter/forklift operator, has an accepted occupational disease claim (Form CA-2) alleging for herniated discs at L3-4 and L4-5, psychogenic pain, and dysthymic disorder, which arose on or about April 1, 1992.<sup>4</sup> OWCP paid him wage-loss compensation beginning August 22, 1995 and placed him on the periodic compensation rolls effective April 15, 2007. To date, appellant continues to receive wage-loss compensation for temporary total disability.

On May 25, 2016 OWCP requested information from the Social Security Administration (SSA) regarding whether an offset was required based upon appellant's receipt of any age-related SSA retirement benefits. It provided a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form for SSA to complete and return to OWCP. On August 1, 2016 SSA returned the completed form noting that, effective March 2016, appellant's monthly SSA rate with his FERS contribution was \$511.90 and the corresponding monthly rate without FERS was \$418.70.

Based on the information SSA provided, OWCP calculated a 28-day FERS offset of \$86.98, which it applied to appellant's August 21, 2016 periodic rolls payment. In an August 23, 2016 letter, it explained that his compensation was being reduced in order to avoid a FERS/SSA dual benefit.

In a separate August 23, 2016 internal memorandum, OWCP calculated a FERS offset for the period March 1 through August 20, 2016, which totaled \$537.41.

On August 25, 2016 OWCP issued a preliminary overpayment determination of \$537.41 for the period March 1 through August 20, 2016. It explained that the overpayment of compensation was because appellant had received retirement benefits concurrently with FECA benefits which constituted a prohibited dual benefit. Attached to the preliminary overpayment determination was a worksheet explaining how the overpayment was calculated. OWCP also advised that appellant was at fault in the creation of the overpayment. It provided him an Overpayment Recovery Questionnaire (Form OWCP-20) and informed him of his appeal rights.

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<sup>4</sup> Effective August 22, 1995, appellant received a disability retirement through the Office of Personnel management (OPM). When OWCP ultimately accepted his claim in June 2003, he subsequently elected to receive FECA wage-loss compensation in lieu of OPM disability retirement benefits.

In an August 29, 2016 letter, counsel argued that appellant was covered under the Civil Service Retirement System (CSRS), rather than FERS. He submitted a January 21, 2004 letter from OPM that identified appellant as a “civil service” annuitant under CSRS.<sup>5</sup>

On August 29, 2016 appellant telephoned OWCP (CA-110 notes) and similarly noted that he was not covered under FERS. He explained that his SSA payments, which began April 1, 2016, were from private industry employment, not federal service. Appellant also noted that he had previously served in the military. He telephoned OWCP again on August 30, 2016 and reiterated that he was not under FERS, and should be listed under the “old system.”

In an August 31, 2016 letter to appellant, OWCP generally explained the CSRS and CSRS-Offset retirement systems, in conjunction with age-related SSA benefits. It also indicated that he began receiving SSA benefits on March 1, 2016 at age 64. OWCP further noted that appellant turned 65 on April 4, 2016.

In an August 31, 2016 letter to OWCP, counsel indicated that he reviewed appellant’s SSA earnings history, and in 1990, it appeared that SSA deductions were made even though appellant remained covered under CSRS. He also expressed disagreement with the preliminary determination of fault, noting: “How was [appellant] capable of determining whether [OWCP] paid him correctly under these circumstances?”

In a September 27, 2016 decision, OWCP finalized the preliminary determination regarding the fact and amount of the overpayment, as well as its finding that appellant was at fault in the creation of the overpayment.<sup>6</sup> It recovered the entire \$537.41 overpayment from his periodic rolls payment for the period September 18 through October 15, 2016.

### **LEGAL PRECEDENT**

A FECA beneficiary may not receive wage-loss compensation concurrently with a Federal retirement or survivor annuity.<sup>7</sup> To avoid payment of a dual benefit, FECA wage-loss compensation benefits shall be reduced by the amount of SSA benefits attributable to the employee’s federal service.<sup>8</sup> However, an offset is not required where the employee beneficiary is covered under the CSRS and/or his SSA age-related benefits are attributable to private sector employment.<sup>9</sup>

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<sup>5</sup> A similar letter from OPM dated February 8, 2007 also identified appellant as a civil service annuitant under CSRS.

<sup>6</sup> The final overpayment decision noted that the preliminary decision, which outlined how the overpayment occurred, was incorporated by reference.

<sup>7</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>8</sup> *Id.* at § 8116(d)(2); *id.* at § 10.421(d).

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); *id.* at Chapter 2.1000.4e(2) (January 1997).

## ANALYSIS

The Board finds that this case is not in posture for decision. OWCP declared an overpayment of compensation because appellant was purportedly covered under FERS, and his age-related SSA retirement benefits were based in part on his federal service (FERS-based). In finding that appellant received a prohibited dual benefit OWCP relied, in part, on information provided by SSA. On August 1, 2016 SSA submitted a FERS/SSA dual benefit calculation which included retirement rates effective March 2016. SSA represented that a portion of appellant's monthly age-related retirement benefits was based on his FERS contributions. However, OPM represented that his federal employment was covered under CSRS, rather than FERS. Thus, it is unclear from the record whether appellant was covered under FERS or CSRS.<sup>10</sup> Moreover, the record does not document his receipt of SSA age-related retirement benefits for the period March 1 through August 20, 2016. The information received from SSA only included rate information, effective March 2016. It does not otherwise document appellant's receipt of SSA age-related retirement benefits for the claimed overpayment period. Therefore, the record does not support OWCP's finding that appellant received a prohibited dual benefit.<sup>11</sup>

Accordingly, the case shall be remanded for documentation of appellant's retirement system coverage, as well as proof of his receipt of SSA age-related retirement benefits.<sup>12</sup> Following this and any necessary further development, OWCP shall issue a *de novo* decision.

## CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$537.41 for the period March 1 through August 20, 2016.<sup>13</sup>

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<sup>10</sup> The record does not include a Form SF-50 (Notification of Personnel Action) indicating whether appellant was covered under CSRS, CSRS Offset, or FERS. In a June 23, 2003 claim for compensation (Form CA-7), appellant indicated that he was covered under CSRS and had been receiving a monthly annuity since August 1995. On the Form CA-7 (Section 10), the employing establishment indicated that it was unaware of his retirement system coverage as it no longer had his file.

<sup>11</sup> See *J.J.*, Docket No. 14-0785 (issued September 3, 2014).

<sup>12</sup> OWCP should obtain a complete payment history from SSA regarding the age-related benefits appellant reportedly received beginning March 1, 2016.

<sup>13</sup> As the fact and amount of the overpayment is not yet established, it is premature to address the issue of fault, as well as the method of repayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: March 8, 2018  
Washington, DC

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

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

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