

2004 through June 24, 2017 as it had failed to appropriately offset the portion of her Social Security Administration (SSA) benefits attributable to her federal service from her wage-loss compensation benefits. It further advised her of its preliminary finding that she was at fault in the creation of the overpayment.

On November 21, 2017 appellant requested a prerecoupment hearing before an OWCP hearing representative. At the June 14, 2018 telephonic prerecoupment hearing, she contended that she received SSA benefits based on her husband's earnings subsequent to his death on February 18, 2011. Appellant further questioned whether she was covered under the Federal Retirement System (FERS) rather than the Civil Service Retirement System (CSRS).

Subsequent to the hearing, appellant submitted retirement information from the Office of Personnel Management (OPM) and SF-50s from the employing establishment indicating that she had FERS retirement coverage.

By decision dated August 23, 2018, OWCP's hearing representative remanded the case for OWCP to obtain clarification from SSA regarding whether appellant received SSA survivor's benefits or age-related benefits due to her federal service. She noted that the evidence of record established that appellant had FERS retirement coverage.

On remand, by letter dated September 5, 2018, OWCP requested that SSA specify whether appellant had received SSA benefits attributable to her federal service for the period January 1, 2004 through June 24, 2017, noting that she also had received SSA survivor's benefits beginning February 18, 2011.

SSA did not respond to OWCP's request for clarification.

By decision dated January 16, 2019, OWCP found that appellant had received an overpayment of compensation in the amount of \$8,278.13 for the period January 1, 2004 through June 24, 2017 because it had failed to offset the amount of SSA benefits that she received attributable to her federal service from her wage-loss compensation.² It noted that it had not been able to obtain additional information from SSA regarding her benefits. OWCP found that appellant was without fault in the creation of the overpayment of compensation, but denied waiver of recovery of the overpayment. It determined that it would recovery the overpayment by withholding \$170.83 from her continuing compensation payments every 28 days.

The Board has duly considered the matter and finds that the case is not in posture for decision. OWCP's hearing representative remanded the case for OWCP to clarify whether appellant had received SSA benefits as part of FERS based on her federal service or survivor's benefits from her husband. She instructed OWCP to determine the exact amount of the benefits, if any, she received due to her federal service. On remand OWCP attempted to obtain information from SSA; however, SSA failed to respond to its request. It has the burden of proof to establish that appellant received an overpayment of wage-loss compensation of \$8,278.13 based on its failure to offset her SSA benefits based on her federal service for the period January 1, 2004 through June 24, 2017. The offset provision of FECA applies to SSA benefits that are attributable

² OWCP issued a preliminary determination of overpayment on December 12, 2018.

to federal service.³ As OWCP has not established that appellant received benefits from SSA in the amount of \$8,278.13 based on her federal service for the period in question, rather than survivor's benefits from her deceased spouse, it has not met its burden of proof.⁴ The Board has held that, in an overpayment situation, OWCP must explain the basis for its finding of overpayment and how the amount of overpayment was calculated.⁵

Accordingly, the case will be remanded to OWCP for it to again request clarification from SSA regarding the amount, if any, of age-related retirement benefits appellant received based on her federal service.⁶ Following receipt of that information it will then determine whether she received an overpayment of compensation, and the period and amount of the overpayment. Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the January 16, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: December 31, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

³ 5 U.S.C. § 8116(d)(2); 20 C.F.R. §10.421(d); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

⁴ *See A.C., id.* (finding that OWCP had not met its burden of proof to establish an overpayment of compensation when it had not established that appellant received benefits under FERS rather than CSRS).

⁵ *See M.M. (J.M.)*, Docket No. 17-0560 (issued August 23, 2017).

⁶ *See generally D.B.*, Docket No. 16-1224 (issued June 23, 2017) (finding that OWCP must clarify whether the offset rates under CSRS offset were the same as in the FERS retirement plan).