

Board further found that the case was not in posture for decision with respect to the amount of the overpayment or the period of the overpayment as SSA had provided OWCP with information regarding appellant's rate of SSA benefits beginning September 2008 both with and without Federal Retirement System (FERS) offset while the record established that appellant was covered under the Civil Service Retirement System (CSRS)-Offset retirement plan. The Board found that it was unclear from the record whether the rates under the CSRS-Offset retirement plan were the same as the rates under the FERS plan. The Board remanded the case for OWCP to obtain additional information from SSA and the Office of Personnel Management (OPM) regarding appellant's retirement system and her SSA rate with and without any offset required based on her federal civilian service. The Board instructed OWCP to then recalculate the amount and period of the overpayment and issue a *de novo* decision.

In facsimile (fax) transmittals dated January 8 and February 20, 2018, OWCP requested that SSA provide information regarding any dual benefits appellant may have received. On March 2, 2018 SSA submitted a form which showed SSA rates with a FERS offset and without a FERS offset from September 2008 through December 2017.

By decision dated March 22, 2018, OWCP amended the overpayment amount and found that appellant received a \$6,361.40 overpayment of compensation from September 1, 2008 through March 3, 2018. It noted that the original overpayment was \$47,469.74. OWCP reduced the amount of the overpayment to \$11,161.23 to reflect the amount of the FERS offset based on new information from SSA. This was the difference between \$47,469.74 and \$36,308.51. OWCP indicated that appellant had paid \$300.00 per month since October 16, 2016 towards the original overpayment amount for a total of 18 payments, which reduced the new amount of the overpayment to \$6,361.40. It further indicated that \$4,799.83 was credited to the \$11,161.23 overpayment for payments deducted from appellant's compensation benefits. OWCP found that as a result of the incorrect amount of FERS offset deducted from appellant's compensation, it had deducted \$13,307.89 from her compensation for the period covering March 6, 2016 through March 3, 2018 in error. It determined that the correct amount of the FERS offset for the stated period was \$2,445.07. OWCP subtracted \$2,445.07 from \$13,307.80, which yielded \$10,862.82. It determined that it had over-deducted \$10,862.82 from the \$6,361.40 overpayment. OWCP therefore concluded that appellant had repaid the overpayment in full and was entitled to a refund of \$4,501.42.

The Board has duly considered the matter and finds that this case is not in posture for decision as OWCP did not comply with the Board's instructions as set forth in its November 3, 2017 decision. By that decision, the Board found that the record established that appellant was not covered by FERS, but was instead under the CSRS-Offset retirement plan. On remand OWCP was to obtain additional information from SSA and OPM regarding appellant's retirement system and her SSA rate with and without an offset required based on her federal civilian service. However, OWCP calculated the amount of the overpayment in this case based only upon the information received from SSA, which included rate information for a FERS offset and without a FERS offset. OWCP did not determine whether the rates in the FERS plan were the same as the rates under the CSRS-Offset retirement plan. OWCP should have sought clarification from SSA and OPM regarding appellant's retirement coverage under the CSRS-Offset retirement plan prior to determining the amount of the overpayment.

On return of the case record OWCP should consult with SSA and OPM regarding appellant's retirement coverage under the CSRS-Offset retirement plan and her SSA rate with and without any offset. Only after obtaining all of the necessary information should it then make findings of fact regarding the amount of the overpayment. After determining the amount of the overpayment, OWCP shall develop the matters of fault, waiver of recovery of overpayment, and method of recovery. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the March 22, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for action consistent with this order.

Issued: July 29, 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