

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

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<b>R.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0303</b>
	)	<b>Issued: December 7, 2020</b>
<b>DEPARTMENT OF THE ARMY, CIVILIAN</b>	)	
<b>PERSONNEL ADVISORY CENTER,</b>	)	
<b>Fort Hood TX, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 25, 2019 appellant filed a timely appeal from a July 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 20-0303.

On May 26, 1995 appellant, then a 61-year-old federal employee, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 1995 he was injured while in the performance of duty. OWCP accepted the claim for sprain of the lumbar region of the back, cervical spondylosis without myelopathy, and prolonged depressive reaction.

On July 5, 2018 OWCP received a Social Security Administration (SSA) dual benefits calculation form indicating appellant's SSA benefit rates with a Federal Employees Retirement System (FERS) offset and without a FERS offset from February 1996 to December 2017.

In a preliminary determination dated December 7, 2018, OWCP informed appellant that he received an overpayment of compensation in the amount of \$62,548.61, for which he was not at fault, because the SSA/FERS offset was not applied to his FECA compensation payments for the period February 1, 1996 through September 15, 2018.

By decision dated July 11, 2019, an OWCP hearing representative finalized the preliminary overpayment determination finding an overpayment of compensation in the amount of \$62,548.61 for the period February 1, 1996 through September 15, 2018. The hearing representative explained that the overpayment occurred because OWCP had failed to offset appellant's compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. The hearing representative further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record did not fully document expenses and failed to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience, as appellant's assets exceeded the resource base. The hearing representative found that OWCP would recover the overpayment by deducting \$1,000.00 every 28 days from appellant's continuing compensation payments.

The Board has duly considered the matter and finds that the case is not in posture for decision.

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.<sup>1</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>2</sup>

Upon review of the case record the finds that it is unable to determine whether appellant received SSA age-related retirement benefits under FERS as the necessary documentation is not of record. The record submitted to the Board is incomplete as it does not contain the claim form originally filed by appellant, OWCP's formal acceptances of his work-related conditions, nor a Notification of Personnel Action (Standard Form (SF)-50) which would indicated appellant's appropriate retirement program. Moreover, substantial portions of the record, including documents submitted prior to 2002, are not of record. The Board is, therefore, unable to determine whether appellant was enrolled in a FERS retirement plan and thus whether he actually received a prohibited dual benefit.

The case, therefore, is reversed.

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<sup>1</sup> 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>2</sup> FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

**IT IS HEREBY ORDERED THAT** the July 11, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 7, 2020  
Washington, DC

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

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

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