

old, and stepdaughter, J.O., then 14 years old, as the children from his marriage with the employee appellant. Appellant provided their marriage certificate, the employee's death certificate, and the birth certificates of the minor children. The record indicates that OWCP initially paid survivor benefits for appellant and the minor children M.O. and T.O. on August 16, 1998.³

On September 1, 1998 OWCP advised appellant that he would receive continuing compensation every 28 days in the amount of \$3,022.79 for survivor benefits as a spouse and on behalf of daughters M.O. and T.O.

In a preliminary overpayment determination dated April 8, 2019, OWCP informed appellant that he had received an overpayment of compensation in the amount of \$464,629.10 for the period August 7, 1998 through August 1, 2014 because it failed to offset his compensation payments by the portion of his Social Security Administration (SSA) survivors benefits that were attributable to the employee's federal service. It determined that he was without fault in the creation of the overpayment because he relied on information given by OWCP as to the interpretation of a pertinent provision of FECA or its regulations. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified him that within 30 days of the date of the letter he could request a telephonic conference, a final decision based on the written evidence, or a prerecoupment hearing.

On May 7, 2019 appellant requested a prerecoupment hearing. He indicated that he disagreed that both the overpayment occurred and the amount of the overpayment. Appellant also requested a waiver because he was found to be without fault in the creation of the overpayment.

On August 29, 2019 an OWCP hearing representative conducted a prerecoupment hearing. By decision dated September 30, 2019, an OWCP hearing representative finalized OWCP's preliminary determination that appellant had received an overpayment of compensation in the amount of \$464,629.10 for the period August 7, 1998 through August 1, 2014 because a portion of his SSA survivors benefits were based on credits the employee earned in federal service, resulting in a prohibited dual benefit. It further found that he was without fault in the creation of the overpayment because he could not have reasonably known his FECA survivor benefits did not include a FERS offset. However, OWCP denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery would defeat the purpose of FECA or would be against equity and good conscience. It required recovery of the overpayment by deducting \$5,000.00 every 28 days from appellant's continuing wage-loss compensation payments.

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

³ The Board notes that significant financial documentation of appellant's alleged receipt of Federal Employees' Compensation Act (FECA) benefits is not present in the record.

FECA survivor's benefits attributable to an employee's federal service constitute a prohibited dual benefit if paid concurrently with SSA survivors benefits, based upon the employee's federal service.⁴

The case record as transmitted to the Board is missing substantial portions of documents related to the employee's federal service, most documents related to appellant's alleged receipt of FECA survivor's benefits prior to 2002, and documents related to appellant's receipt of SSA survivors benefits. The Board is therefore unable to determine whether OWCP properly determined fact and amount of the overpayment. For example, the record does not document by Standard Form (SF)-50 or other evidence that the employee was covered by a Federal Employees Retirement System (FERS) retirement plan. The Board is therefore unable to determine whether appellant received a FECA death benefit, which was subject to the SSA FERS survivors offset. Also, while the evidence of record establishes that the employee had three minor daughters at the time of her death, the record indicates that appellant received FECA survivor's benefits on behalf of himself, and two minor daughters. There is no documentation of record as to whether the SSA survivor's benefits, which are the subject of the overpayment offset, were, however, paid on behalf of appellant and all three of the employee's minor daughters.

Because the record as transmitted to the Board is incomplete and would not permit an informed adjudication of the case,⁵ the Board is unable to properly consider and determine fact and amount of the overpayment. The case, therefore, is remanded to OWCP for reconstruction and proper assemblage of the record.⁶ After such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's alleged overpayment.

⁴ 5 U.S.C. § 8116(d)(2) of FECA provides for limitations on the right to receive compensation and states in pertinent part: "(d) Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under [S]ubchapter [3] of [C]hapter 84 of this title or benefits under [T]itle [2] of the [SSA] shall be entitled to all such benefits, except that --"(2) in the case of benefits received on account of age or death under [T]itle [2] of the [SSA,] compensation payable under this subchapter based on the [f]ederal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to [f]ederal service of that employee covered by [C]hapter 84 of this title." See *M.M.*, Docket No. 17-0560 (issued August 23, 2017).

⁵ See *D.H.*, Docket No. 17-0224 (issued August 16, 2018).

⁶ *Id.*

IT IS HEREBY ORDERED THAT the September 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 3, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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