



A February 27, 2001 notification of personnel action (Standard Form 50-B) indicated that appellant received disability retirement through the Office of Personnel Management (OPM) and noted a March 26, 1975 service computation date (leave). The form also indicated that appellant was covered under the Civil Service Retirement System (CSRS). Appellant's separation from federal service became effective March 2, 2001.

OWCP paid appellant wage-loss compensation for temporary total disability beginning March 3, 2001. It placed appellant on the periodic rolls effective January 27, 2002, and it has continued to pay him wage-loss compensation for more than a decade.

In August 2011, appellant was eligible to receive age-related retirement benefits from the Social Security Administration (SSA) as he had reached the age of 62 years. Several weeks prior to his 62<sup>nd</sup> birthday, OWCP advised him of the possibility of an overpayment should he receive FECA wage-loss compensation in addition to SSA age-related retirement benefits based on his federal service. Appellant was to immediately notify OWCP when he began receiving SSA age-related retirement benefits attributable to his federal service. For several years thereafter, he continued to receive FECA wage-loss compensation on the periodic rolls.

An August 4, 2017 letter from SSA indicated that, effective December 2016, appellant's gross monthly benefit was \$1,211.70. The letter also noted that he had been receiving SSA age-related retirement benefits since August 2011.

On August 9, 2017 an SSA representative completed a Federal Employees Retirement System (FERS)/SSA dual benefits calculation. The form included calculations of appellant's monthly SSA benefit beginning August 2011, and each year thereafter from December 2011 through December 2016. SSA provided appellant's corresponding monthly benefit both with and without his purported FERS contributions.

Effective September 17, 2017, OWCP reduced appellant's 28-day compensation payments to account for the SSA age-related retirement benefits he received that were purportedly attributable to his federal service (FERS offset).

On October 3, 2017 OWCP calculated that appellant was overpaid \$43,799.99 for the period August 1, 2011 through September 16, 2017. It based its FERS offset overpayment calculation on the information SSA provided on August 9, 2017.

On October 6, 2017 OWCP advised appellant of its preliminary determination that appellant received an overpayment of compensation in the amount of \$43,799.99 for the period August 1, 2011 through September 16, 2017 because it had not reduced his FECA wage-loss compensation to reflect his receipt of SSA age-related retirement benefits that were based on his federal service. It also advised him of its preliminary determination that he was at fault in the creation of the overpayment. OWCP informed appellant of his various appeal rights, and provided him an overpayment recovery questionnaire (Form OWCP-20) to complete and submit along with supporting financial documentation.

On October 18, 2017 SSA provided another FERS/SSA dual benefits calculation form. However, the latest calculations noted significantly lower SSA monthly benefits (without FERS) than previously reported.<sup>3</sup>

By decision dated November 28, 2017, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount he was overpaid \$43,799.99 for the period August 1, 2011 through September 16, 2017 and that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. Additionally, it determined that the overpayment would be recovered by withholding \$799.00 from his continuing compensation payments every 28 days.

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.<sup>4</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 FERS-based federal service.<sup>5</sup> However, an offset is not required where the employee-beneficiary is covered under the CSRS and his or her SSA age-related benefits are attributable to private sector employment.<sup>6</sup> If OWCP cannot determine what retirement system the claimant is under, it should send a letter to both the claimant and OPM requesting pertinent information.<sup>7</sup>

The Board finds that this case is not in posture for decision as the current record includes conflicting information regarding appellant's retirement coverage. Although SSA provided information in August and October 2017 indicating that a portion of appellant's monthly age-related retirement benefit was attributable to his FERS contributions, the record includes a February 27, 2001 Standard Form 50-B that indicates appellant was covered under CSRS, not FERS.<sup>8</sup> Moreover, the record includes three Form CA-7 claims for compensation dating back to 2001 where the employing establishment and appellant both represented that he was covered under CSRS.

Given the conflicting information of record regarding appellant's retirement coverage, the case must be remanded to OWCP for further development. On remand OWCP shall consult with OPM regarding appellant's retirement coverage. To the extent that appellant's monthly SSA age-related retirement benefits were based in part on his FERS-based federal service, OWCP should

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<sup>3</sup> For example, the August 9, 2017 calculations revealed that, as of August 2011, appellant's monthly SSA rate without FERS was reportedly \$554.40, and the December 2016 rate without FERS was \$604.60. In contrast, the October 18, 2017 FERS/SSA dual benefits calculation indicated that his monthly rate effective August 2011 was \$428.20 without FERS, and the corresponding rate without FERS beginning December 2016 was \$467.00.

<sup>4</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>5</sup> 5 U.S.C. § 8116(d)(2); 20 C.F.R. § 10.421(d).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.9c (May 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4e (January 1997).

<sup>7</sup> *Id.* at Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.9c

<sup>8</sup> Under CSRS, federal employees were generally exempt from paying social security taxes; Old-age, Survivors and Disability Insurance. 5 U.S.C. §§ 8331- 8351.

also obtain a complete earnings history and benefits payment history from SSA prior to issuing another preliminary and/or final overpayment determination.

**IT IS HEREBY ORDERED THAT** the November 28, 2017 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: January 21, 2020  
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