

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

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<b>R.E., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1583</b>
	)	<b>Issued: May 27, 2020</b>
<b>U.S. POSTAL SERVICE, SANDPOINT ANNEX,</b>	)	
<b>Sandpoint, ID, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 19, 2019 appellant filed a timely appeal from a January 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1583.<sup>1</sup>

On December 18, 2011 appellant, then a 66-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained C6 nerve radiculopathy, dysfunctional upper right extremity mechanics, cervical radiculitis, right rotator cuff impingement syndrome, and right cervical and thoracic myofascial pain causally related to factors of his federal employment, including aggravation of injuries sustained in a motor vehicle incident on June 15, 2010 due to his limited-duty federal assignment. OWCP accepted the claim for temporary aggravation of C7 radiculopathy and neck sprain on March 5, 2012, and expanded acceptance of the claim on

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<sup>1</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

April 12, 2012 to include brachial neuritis or radiculitis and right rotator cuff syndrome. OWCP assigned this claim OWCP File No. xxxxxx832.<sup>2</sup>

Under OWCP File No. xxxxxx345, OWCP paid appellant compensation on the supplemental rolls for the period June 15, 2010 through April 6, 2012. Under OWCP File No. xxxxxx832, it paid compensation on the supplemental rolls for the period April 7 through May 4, 2012 and on the periodic rolls from May 6, 2012 through March 31, 2018.

A Notice of Personnel Action (Form SF-50) indicated that appellant was medically separated from the employing establishment on September 20, 2013 and that he was covered under the Federal Employees Retirement System (FERS).

On March 15, 2018 OWCP received a Social Security Administration (SSA) FERS/SSA Dual Benefit Calculation Form. SSA provided appellant's SSA rate with FERS and his SSA rate without FERS from February 2007 through December 2017. It advised that he was entitled to retirement benefits subject to SSA/FERS offset from February 2007 through the date of the response. This form provided inconsistent SSA rates with FERS, for example: as of February 2007 appellant's SSA rate with FERS was listed as \$1,073.50; as of May 2007 \$129.00; as of June 2007 \$1,073.50; as of December 2007 \$1,098.20; as of January 2008 \$1,109.50; as of April 2008 \$270.00; \$1,109.50 as of May 2008; \$1,173.80 as of December 2008; \$1,184.50 as of January 2009; \$140.00 as of August 2009; \$1,184.50 as of September 2009; \$1,201.70 as of January 2010; and \$557.20 as of June 2010. No explanation was provided on this form as to why the SSA rate with FERS was significantly reduced and was less than the SSA rate without FERS for various periods of time.

By letter dated April 18, 2018, OWCP forwarded a recomputation request to SSA, asking that it clarify the listed amounts from January 2007 to December 2010 as several of the FERS rates appeared to be incorrect.

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

In an e-mail dated April 18, 2018, an OWCP claims examiner related that appellant was overpaid because an SSA/FERS offset was not applied to payments from January 1, 2011 through March 31, 2018, per the March 15, 2018 calculations received from the SSA. The claims examiner noted that appellant's SSA disability benefits automatically converted to retirement benefits on January 1, 2011. In an attached FERS offset calculation of the same date, OWCP calculated the amount of compensation that appellant should have received from January 1, 2011 through March 31, 2018 with a FERS offset to find an overpayment of compensation in the amount of \$20,741.54.

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<sup>2</sup> Under OWCP File No. xxxxxx345, OWCP accepted a traumatic injury claim (Form CA-1) for neck sprain, lumbar sprain, adjustment reaction, post-traumatic stress disorder, and C6 radiculopathy as related to a motor vehicle incident in the performance of duty on June 15, 2010. Under OWCP File No. xxxxxx609, it accepted an occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome as related to factors of appellant's federal employment with a date of injury of August 20, 2010. These claim files have been administratively combined with OWCP File No. xxxxxx832 serving as the master file.

On April 26, 2018 OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$20,741.54 because it failed to offset the portion of the SSA benefits that he had received due to his federal service from his FECA benefits. It further notified him of its preliminary determination that he was at fault in the creation of the overpayment, as he knowingly accepted a payment that he knew or should have known was incorrect.

On May 24, 2018 appellant requested a precoupment hearing with OWCP's Branch of Hearings and Review. The precoupment hearing was held on November 9, 2018.

By decision dated January 23, 2019, OWCP's hearing representative finalized the preliminary overpayment determination and found an overpayment of compensation had been created in the amount of \$20,741.54 for the period January 1, 2011 through March 31, 2018 because OWCP had failed to offset appellant's compensation payments for the portion of appellant's SSA age-related retirement benefits that were attributable to his federal service. She found that appellant was at fault in the creation of the overpayment and thus ineligible for consideration of waiver of recovery of the overpayment. Therefore appellant determined that recovery of the overpayment would be made by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

The Board has duly considered the matter and finds that the case is not in posture for decision. A claimant cannot receive concurrent compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>3</sup> On March 15, 2018 SSA completed a FERS/SSA Dual Benefit Calculation Form and reported that appellant had received retirement benefits subject to SSA/FERS offset from February 2007 through the date of the response. OWCP requested clarification from SSA regarding apparent errors in the listed amounts from January 2007 to December 2010, as several of the figures appeared to incorrectly list SSA rates with FERS. SSA did not respond to the request for clarification. It thereafter determined that appellant's SSA age-related retirement benefits were subject to SSA/FERS offset as of January 1, 2011, whereas SSA had reported appellant's receipt of age-related retirement benefits as of February 2007.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.<sup>4</sup> With respect to the duration and amount of the overpayment, the Board finds that OWCP has not adequately explained how the period and amount of the overpayment was determined in light of the discrepancies in the evidence provided by SSA as to when appellant began to receive SSA age-related retirement benefits and the SSA rate with FERS.<sup>5</sup>

Accordingly, the case will be remanded to OWCP for it to request clarification from SSA regarding the amount, of age-related retirement benefits appellant received based on his federal

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<sup>3</sup> 20 C.F.R. § 10.421(d); FECA Bulletin No. 97-09 (February 3, 1997); *see also* A.C., Docket No. 18-1550 (issued February 21, 2019); N.B., Docket No. 18-0795 (issued January 4, 2019).

<sup>4</sup> *See* J.M., Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

<sup>5</sup> *E.T.*, Docket No. 19-1046 (issued December 31, 2019).

service.<sup>6</sup> Upon receipt of that information, it shall then determine whether he received an overpayment of compensation, the period and amount of the overpayment, and whether he was with fault in its creation. Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the January 23, 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: May 27, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> *Id.*