

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

M.F., Appellant)	
)	
and)	Docket No. 18-0724
)	Issued: March 27, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Candler, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 20, 2018 appellant filed a timely appeal from a January 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant timely requested oral argument before the Board. By order dated February 26, 2019, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0724 (issued February 26, 2019).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 24, 2018 decision, OWCP received additional evidence. 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.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$36,690.17 for the period February 1, 2014 through March 4, 2017 because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; and (2) whether OWCP properly found that she was at fault in the creation of the overpayment and, thus, precluded from waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 22, 2003 appellant, then a 51-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a torn right rotator cuff due to factors of her federal employment. OWCP accepted an aggravation of a degenerative tear of the right rotator cuff, a complete rotator cuff rupture, and right shoulder disorders of the bursae and tendons. Appellant stopped work on September 29, 2003 and did not return.

In a letter dated March 17, 2004, OWCP informed her that she was being placed on the periodic compensation rolls. It also advised appellant to report all retirement income, disability income, or compensation benefits from any federal agency, noting that a recipient of compensation benefits under FECA was not permitted to receive benefits under certain other federal programs, including the Civil Service Retirement System (CSRS). On the notification of placement on the periodic rolls form, dated March 15, 2004, the claims examiner checked a box marked “no” to the question of whether there is a FERS SSA/LEO offset applicable to the claim.

In a record of a telephone conversation dated December 20, 2013, an OWCP claims examiner noted that it “appeared that appellant was under the Federal Employees Retirement System (FERS).” The claims examiner informed appellant that her wage-loss compensation would be offset for the portion of earnings that were due to FERS-covered federal service and instructed her to inform OWCP immediately when she began to receive SSA age-related retirement benefits.

In a record of a telephone conversation dated April 21, 2014 (Form CA-110), appellant informed OWCP that she had received a letter from SSA indicating that she would be receiving SSA retirement payments retroactively to February 20, 2014.

In an EN1032 form signed January 15, 2015, appellant indicated that she received SSA benefits as part of an annuity for federal service in a monthly amount of \$1,183.00 and that she had been notified by SSA by letter dated May 5, 2014.⁴ In an EN1032 form signed January 19, 2016, appellant indicated that she received SSA benefits as part of an annuity for federal service in a monthly amount of \$1,203.00.

On March 25, 2016 SSA forwarded a FERS/SSA dual benefits calculation form to OWCP. The form indicated that: beginning in February 2014, appellant’s SSA rate with FERS was

⁴ The EN1032 forms signed by appellant provided, in part: “Report any benefits received from the SSA which you receive as part of an annuity under [FERS]. DO NOT report any benefits received from the SSA on account of employment in the private sector.”

\$1,183.00 and without FERS was \$208.60; beginning in December 2014, her SSA rate with FERS was \$1,203.00 and without FERS was \$212.20; and beginning in December 2015, her SSA rate with FERS was \$1,203.00 and without FERS was \$212.20.

In an EN1032 form signed January 3, 2017, appellant indicated that she received SSA benefits as part of an annuity for federal service in a monthly amount of \$1,203.00.

On February 27, 2017 SSA forwarded an updated FERS/SSA dual benefits calculation form to OWCP. The form indicated that, in addition to appellant's previous SSA rates with and without FERS, beginning in December 2016, her SSA rate with FERS was \$1,206.60 and without FERS was \$212.80.

By letter dated March 10, 2017, OWCP notified appellant that, based on information provided by SSA regarding the amount of her SSA benefits attributable to federal service, it had adjusted her FECA wage-loss compensation and that she would receive \$1,575.19 every 28 days after the SSA offset.

OWCP completed a FERS offset calculation form on March 10, 2017 and found a total overpayment of compensation in the amount of \$36,690.17.

On March 10, 2017 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$36,690.17 for the period February 1, 2014 to March 4, 2017 because she received wage-loss compensation from OWCP and SSA age-related retirement benefits without an appropriate offset. It included a FERS offset calculation sheet setting forth the claimed basis of the overpayment. OWCP found that she was at fault in the creation of the overpayment and provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20).⁵ It informed appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

Subsequently, appellant submitted a November 1, 2006 letter from the Office of Personnel Management (OPM) to the employing establishment. OPM advised that she had been incorrectly placed under CSRS from August 20, 1988 to April 9, 1992 instead of being under FERS. It noted that on May 19, 2006, under the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), appellant had elected coverage under the CSRS Offset system. OPM requested that the employing establishment amend her employment records to indicate that her retirement coverage was under the CSRS Offset system.

Appellant, on April 4, 2017, requested a prerecoupment hearing before an OWCP hearing representative. She contended that she was without fault in the creation of the overpayment. In an accompanying statement, appellant asserted that she should not have to refund the money because she had completed and returned reports to OWCP as she was instructed.

⁵ OWCP requested appellant to include supporting documentation with her completed overpayment recovery questionnaire, including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records, which supported income and expenses listed.

Appellant submitted a portion of a letter from SSA dated May 9, 2017, which noted that she had informed SSA that she was entitled to a Civil Service pension, though she was not currently receiving one, and asked her to notify SSA when she began to receive her Civil Service pension.

By letter dated May 23, 2017, OWCP informed appellant that SSA needed to confirm that she was not in receipt of FERS benefits and that she was covered under CSRS.

Appellant submitted a notification of personnel action (SF-50) dated May 23, 2017, which indicated that she was covered under the CSRS Offset system. She also resubmitted the letter from OPM dated November 1, 2006.

A telephonic hearing was held on November 9, 2017. During the hearing, appellant contended that she was not under FERS, but was under the CSRS Offset system. The hearing representative advised that receiving age-related retirement benefits from SSA as well as FECA benefits from OWCP constituted a prohibited dual benefit. She afforded appellant 30 to submit additional evidence.

By decision dated January 24, 2018, the hearing representative finalized the overpayment determination, finding that appellant had received an overpayment of wage-loss compensation in the amount of \$36,690.17 from February 1, 2014 to March 4, 2017 because OWCP had failed to deduct SSA age-related retirement benefits from her compensation for that period. She further found that appellant was at fault in the creation of the overpayment, as she was aware she was not entitled to receive both SSA retirement benefits and FECA benefits concurrently. The hearing representative required that appellant forward the entire amount as repayment, noting that she had not submitted supporting financial documentation.

LEGAL PRECEDENT -- ISSUE 1

A FECA beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁶ 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 federal service.⁷ However, an offset is not required when the employee beneficiary is covered under the CSRS and/or her SSA age-related benefits are attributable to private sector employment.⁸

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

OWCP determined that appellant had received an overpayment of compensation in the amount of \$36,690.17 for the period February 1, 2014 through March 4, 2017 because she

⁶ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁷ *Id.* at § 8116(d)(2); *id.* at § 10.421(d).

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012); *id.* at Chapter 2.1000.4e(2) (January 1997).

concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The offset provision of section 8116(d)(2) applies to SSA benefits that are attributable to federal service.⁹ An offset is not required, however, where the employee beneficiary is covered under the CSRS and/or her SSA age-related benefits are attributable to private sector employment.¹⁰

The Board finds that the evidence of record establishes that appellant paid FICA taxes as a federal civilian employee under the CSRS Offset system, a precursor to FERS, which required contributions to both CSRS and social security. That system generally applied to certain new hires or former CSRS-covered employees who had been separated from service for at least one year and rehired after December 31, 1983.¹¹ The evidence of record establishes that appellant received age-based SSA benefits after retirement as a result of her contributions to SSA under the CSRS Offset. The SF-50 form of record, along with claim payment documents, establish that appellant's retirement plan was designated under the CSRS Offset system, not subject to an offset.¹² The Board finds, therefore, that the evidence of record is unclear with regard to what obligations appellant had to contribute to the CSRS and SSA systems and whether an offset was required. As OWCP has not established that appellant received SSA benefits based in part on her federal service concurrently with disability compensation from OWCP without a proper offset, it has not established that she received an overpayment of compensation for the period February 1, 2014 through March 4, 2017.

The Board further finds that the evidence of record is unclear as to whether the rates under the CSRS-offset plan are the same as the rates in the FERS plan.¹³ SSA provided OWCP with information regarding appellant's rate of SSA benefits beginning February 2014 both with and without FERS. As explained above, appellant, however, was designated as enrolled in a CSRS retirement, not a FERS retirement. Accordingly, the case will be remanded to OWCP to obtain additional information from SSA and OPM regarding appellant's documented retirement system and her SSA rate with and without an offset required based on her federal civilian service.¹⁴ It may then determine whether appellant received an overpayment of compensation and also recalculate the period and amount of an overpayment, if any. Following this and such other development as may be deemed necessary, OWCP shall issue a *de novo* decision.

⁹ *Supra* note 7.

¹⁰ *Supra* note 8.

¹¹ *See J.M.*, Docket No. 12-0954 (issued November 26, 2012).

¹² *See J.S.*, Docket No. 17-0965 (issued August 16, 2017).

¹³ *See C.S.*, Docket No. 19-0157 (issued July 9, 2019).

¹⁴ *Id.*; *see also B.O.*, Docket No. 17-0510 (issued November 3, 2017); *D.B.*, Docket No. 16-1224 (issued June 23, 2017).

CONCLUSION

The Board finds that the case is not in posture for decision.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 27, 2020
Washington, DC

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

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

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

¹⁵ In light of the Board's determination regarding the fact and amount of the overpayment, it is premature to address the issues of fault and waiver of recovery of the overpayment.