

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

P.R., Appellant

and

**DEPARTMENT OF THE ARMY,
INSTALLATION MANAGEMENT
COMMAND, Fort Buchanan, PR, Employer**

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**Docket No. 20-0851
Issued: January 29, 2021**

Appearances:

*Carlos R. Rivera, Sr., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REVERSING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 6, 2020 appellant, through his representative, filed a timely appeal from a September 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-0851.

The issues on appeal before the Board relate to OWCP's September 27, 2019 finding of an overpayment of wage-loss compensation benefits in the amount of \$21,587.70 for the period June 1, 1995 through August 18, 2018, for which he was without fault, due to appellant's alleged concurrent receipt of Federal Employees' Compensation Act² (FECA) wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset for benefits attributable to the Federal Employees Retirement System (FERS). OWCP also

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

denied waiver of recovery of the overpayment and required repayment of \$333.20 every 28 days from continuing compensation benefits.

The Board finds that OWCP failed to properly develop the underlying issue of what portion of appellant's SSA age-related retirement benefits were attributable to federal employment.³

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/FECA offset amount. Since the SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.⁴ The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement 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.⁶ In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of SSA age-related retirement benefits, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.⁷ This calculation worksheet is sent to SSA and the completed form is returned to OWCP setting forth purported SSA calculations as to the effective date and rate of SSA benefits without FERS and the effective date and rate of SSA benefits with FERS.⁸ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁹

The Board has observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as the Civil Service Retirement System (CSRS). Other federal employees are not entitled to be enrolled in a federal retirement program. Therefore, OWCP's procedures with regard to requesting offset information are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits.

The information solicited on the FERS Offset Calculation Worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

³ *J.L.*, Docket No. 19-1806 (issued July 29, 2020).

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management -- *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h), (September 2018).

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

⁶ FECA Bulletin No. 97-09 (February 3, 1997).

⁷ *Id.*

⁸ *Id.*

⁹ *Supra* note 2.

In the present case, a notification of personnel action form (SF-50), dated February 1, 1990, indicates that appellant's retirement plan was Federal Insurance Contributions Act (FICA), not FERS.

Herein, the evidence of record does not establish that appellant was enrolled in FERS. As OWCP has not established that appellant received SSA age-related retirement benefits, based on his federal service, concurrently with FECA disability compensation from OWCP, without proper offset, it has not established that he received an overpayment of compensation. The Board therefore finds that the September 27, 2019 decision must be reversed.

IT IS HEREBY ORDERED THAT the September 27, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 29, 2021
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