

On March 9, 2020 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$15,899.82 had been created.² It explained that the overpayment occurred because the employee's Social Security Administration (SSA) age-related retirement benefits that he received from January 1, 2010 through February 1, 2020 were partially based on credits earned while working for the federal government, and that this portion of his SSA benefit constituted a prohibited dual benefit. OWCP found appellant at fault in the creation of the overpayment because the employee failed to provide information, which he knew or should have known, to be material. It forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) and requested that appellant provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support her reported income and expenses. OWCP afforded appellant 30 days to respond.

By decision dated July 10, 2020, OWCP finalized its preliminary determination finding that appellant had received an overpayment of compensation in the amount of \$15,899.82, for the period January 1, 2010 through February 1, 2020, because it had failed to offset the employee's compensation payments by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by forwarding payment in the amount of \$125.00 each month.

The issues on appeal before the Board relate to OWCP's finding of an overpayment of wage-loss compensation benefits due to appellant's alleged concurrent receipt of FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset for benefits attributable to FERS.

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 service.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

² The case record in indicates that the preliminary overpayment was sent to appellant, employees widow. OWCP's procedures in effect at the time of OWCP's December 4, 2018 decision, provide for recovery from a deceased debtor's estate. The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP). OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12, including sending the complete referral package to the National Office for final review and forwarding to the FMS. *See R.B.*, Docket No. 19-0700 (issued March 16, 2021).

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).

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 age-related SSA 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. Other federal employees are not eligible 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. Therefore, 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.

Herein, the evidence of record does not establish that appellant was enrolled in FERS. The record is devoid of evidence as to which retirement system was applicable to appellant. The Board therefore finds that the April 2, 2020 decision must be reversed.

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.

IT IS HEREBY ORDERED THAT the July 10, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 21, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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