

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

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| W.G., Appellant |) | |
| |) | |
| and |) | Docket No. 20-1389 |
| |) | Issued: June 30, 2021 |
| U.S. POSTAL SERVICE, CAMERON POST OFFICE, Cameron, LA, Employer |) | |
| |) | |

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 16, 2020 appellant filed a timely appeal from a June 15, 2020 merit decision of the Office of Workers' Compensation Programs. The Clerk of the Appellate Boards assigned Docket No. 20-1389.¹

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 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).

¹ The Board notes that following the June 15, 2020 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.*

² 5 U.S.C. § 8101 *et seq.*

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 age-related 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. Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁸

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. 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 case record contains appellant's statements dated December 7, 2004 and October 29, 2019 that she was under CSRS, not FERS. A notification of personnel action Form PS 50 dated February 15, 2007 indicates that appellant's service computation date was July 31, 1980 and her retirement plan was CSRS offset. In an internal OWCP memorandum dated February 2, 2017, OWCP noted that

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 *Supra* note 2.

the employing establishment indicated that appellant was covered under CSRS. The Board therefore finds that the June 15, 2020 final overpayment determination must be reversed.

IT IS HEREBY ORDERED THAT the June 15, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 30, 2021
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
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