

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

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<b>R.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1333</b>
	)	<b>Issued: May 13, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Coppell, TX, Employer</b>	)	
_____	)	

*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 June 11, 2020 appellant filed a timely appeal from an April 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 20-1333.

On October 8, 1997 appellant, then a 49-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he sustained a hip and leg condition due to factors of his federal employment. OWCP initially accepted his claim for aggravation of lower back degenerative disc disease. It later expanded the acceptance of the claim to include left elbow lateral epicondylitis.

A notification of personnel action PS Form-50, dated October 21, 1999, indicated that appellant was under the Civil Service Retirement System (CSRS).

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<sup>1</sup> The Board notes that, following the April 16, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

On September 5, 2019 the Social Security Administration (SSA) forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. The form indicated that: beginning February 2014, appellant's SSA rate with FERS was \$1,763.70 and without FERS was \$1,022.20; beginning December 2014, his SSA rate with FERS was \$1,763.70 and without FERS was \$1,039.50; beginning December 2015, his SSA rate with FERS was \$1,793.60 and without FERS was \$1,039.50; beginning December 2016, his SSA rate with FERS was \$1,798.90 and without FERS was \$1,042.60; beginning December 2017, his SSA rate with FERS was \$1,834.80 and without FERS was \$1,063.40; and beginning December 2018, his SSA rate with FERS was \$1,886.10 and without FERS was \$1,093.10.

On December 17, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$52,595.95 had been created because appellant concurrently received SSA age-related retirement benefits and Federal Employees' Compensation Act (FECA) benefits for the period February 1, 2014 through November 9, 2019 without an appropriate offset. It found appellant not at fault in the creation of the overpayment and forwarded an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). OWCP requested that he provide supporting financial documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. It afforded appellant 30 days to submit the requested information. No response was received.

In a letter dated January 23, 2020, OWCP requested that the Office of Personnel Management (OPM) advise of appellant's retirement system as a result of his federal civilian service. It requested calculations of his SSA benefits with and without offset if he was covered under the CSRS or the FERS system.

On April 16, 2020 OPM responded to OWCP's request, noting that appellant's gross monthly annuity was \$1,133.00 and his offset was \$391.61. It did not respond as to appellant's retirement system.

By decision dated April 16, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$52,595.95, for the period February 1, 2014 through November 9, 2019, because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It further found that he 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 deducting \$200.00 every 28 days from appellant's continuing compensation payments.

The Board, having duly considered this matter, 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.<sup>2</sup>

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<sup>2</sup> J.L., Docket No. 19-1806 (issued July 29, 2020).

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of age-related SSA retirement compensation, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.<sup>6</sup> 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.<sup>7</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>8</sup>

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 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 election of benefits documents indicating that appellant was covered under the CSRS offset, not FERS. The Board, therefore, finds that the April 16, 2020 decision must be reversed.

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management -- *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h), (September 2018).

<sup>4</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>5</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

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

<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 2.

**IT IS HEREBY ORDERED THAT** the April 16, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 13, 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  
Employees' Compensation Appeals Board