

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

P.C., claiming as widow of R.C., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 20-1546</b>
DEPARTMENT OF THE AIR FORCE,	)	<b>Issued: May 4, 2021</b>
MONTANA AIR NATIONAL GUARD,	)	
Great Falls, MT, Employer	)	
	)	

*Appearances:*  
William O. Bronson, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On August 21, 2020 appellant, through counsel, filed a timely appeal from a February 26, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1546.

The issues on appeal before the Board relate to OWCP's February 26, 2020 finding of an overpayment of wage-loss compensation in the amount of \$15,287.31 for the period September 1, 1995 through January 7, 2019 for which the employee<sup>2</sup> was without fault, due to his alleged concurrent receipt of Federal Employees' Compensation Act<sup>3</sup> (FECA) wage-loss compensation

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<sup>1</sup> 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.

<sup>2</sup> The record reflects that the employee passed away on December 7, 2019. (RD 12/31/19)

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset. OWCP also denied waiver of recovery of the overpayment.

The Board finds that OWCP failed to properly develop the underlying issue of what portion of the employee's SSA age-related retirement benefits were attributable to federal employment.<sup>4</sup>

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the Federal Employees Retirement System (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>5</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>6</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 concurrent receipt of FECA benefits and federal retirement is a prohibited dual benefit.<sup>7</sup> In identifying the fact and amount of 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.<sup>8</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>9</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>10</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 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.

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<sup>4</sup> See *P.R.*, Docket No. 20-0851 (issued January 29, 2021); see also *L.A.*, Docket No. 20-0949 (issued December 2, 2020).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h) (September 2020).

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

<sup>7</sup> FECA Bulletin No. 97-09 (February 3, 1997); see also *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 3.

In the present case, a notification of personnel action (Form SF-50), dated October 28, 1985, indicates that the employee's retirement plan was "CS," not FERS. (RD 10/28/85) Furthermore, in a July 15, 1986 letter, OWCP advised the employee that he was receiving or may be entitled to receive benefits provided by the U.S. Civil Service Retirement Act. It requested that he complete the enclosed election forms indicating whether he preferred to receive FECA benefits or CSRS benefits for the same period of time.

Accordingly, the Board finds that the evidence of record does not establish that the employee was enrolled in FERS.<sup>11</sup> As OWCP has not established that the employee 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 February 26, 2020 decision must be reversed.

**IT IS HEREBY ORDERED THAT** the February 26, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 4, 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

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<sup>11</sup> See *D.B.*, Docket No. 18-0358 (issued January 21, 2020).