

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

_____)	
D.D., Appellant)	
)	
and)	Docket No. 20-1657
)	Issued: May 12, 2021
U. S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On September 24, 2020 appellant filed a timely appeal from an April 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1657.

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 Act¹ (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).

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.²

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

¹ 5 U.S.C. § 8101 *et seq.*

² *J.L.*, Docket No. 19-1806 (issued July 29, 2020).

calculated for each period in which the offset amount was not withheld from compensation.³ 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.⁴ 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.⁵ 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.⁶ 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.⁷ 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. 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.

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

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

⁵ FECA Bulletin No. 97-09 (February 3, 1997).

⁶ *Id.*

⁷ *Id.*

⁸ *Supra* note 2.

IT IS HEREBY ORDERED THAT the April 2, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 12, 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