

beginning April 29, 1997.² Appellant underwent OWCP-authorized surgeries on May 23, 1991 and September 28, 1993. He stopped his private sector work on April 31, 2006.

On November 9, 2020 OWCP forwarded a Federal Employees Retirement System (FERS)/Social Security Administration (SSA) dual benefits calculation form to the SSA to determine whether an offset of compensation benefits was required.

On November 18, 2020 OWCP received from SSA a completed FERS/SSA dual benefits calculation form, which reported that appellant had been in receipt of age-related retirement benefits since September 2001. The form listed his SSA age-related retirement benefit rates with FERS and without FERS as follows: beginning September 2001 the monthly SSA rate with FERS was \$866.20 and without FERS was \$799.20; beginning December 2001 appellant's SSA rate with FERS was \$888.70 and without FERS was \$819.90; beginning January 2002 his SSA rate with FERS was \$899.60 and without FERS was \$833.70; beginning December 2002 appellant's SSA rate with FERS was \$912.10 and without FERS was \$845.30; beginning January 2003 his SSA rate with FERS was \$922.60 and without FERS was \$858.90; beginning December 2003 appellant's SSA rate with FERS was \$941.90 and without FERS was \$876.90; beginning January 2004 his SSA rate with FERS was \$952.50 and without FERS was \$891.10; beginning December 2004 appellant's SSA rate with FERS was \$978.20, and without FERS was \$915.10; beginning January 2005 his SSA rate with FERS was \$989.70, and without FERS was \$930.20; beginning December 2005 appellant's SSA rate with FERS was \$1,030.20 and without FERS was \$968.30; beginning January 2006 his SSA rate with FERS was \$1,041.40 and without FERS was \$983.50; beginning December 2006 appellant's SSA rate with FERS was \$1,075.70, and without FERS was \$1,015.90; beginning January 2007 his SSA rate with FERS was \$1,075.70, and without FERS was \$1,018.70; beginning December 2007 appellant's SSA rate with FERS was \$1,100.40 and without FERS was \$1,042.10; beginning December 2008 his SSA rate with FERS was \$1,164.20 and without FERS was \$1,102.50; beginning December 2011 appellant's SSA rate with FERS was \$1,206.10, and without FERS was \$1,142.10; beginning December 2012 his SSA rate with FERS was \$1,226.60 and without FERS was \$1,161.50; beginning December 2013 appellant's SSA rate with FERS was \$1,244.90, and without FERS was \$1,178.90; beginning December 2014 his SSA rate with FERS was \$1,266.00 and without FERS was \$1,198.90; beginning December 2016 appellant's SSA rate with FERS was \$1,269.70, and without FERS was \$1,202.40; beginning December 2017 his SSA rate with FERS was \$1,295.00 and without FERS was \$1,226.40; beginning December 2018 appellant's SSA rate with FERS was \$1,331.20, and without FERS was \$1,260.70; and beginning December 2019 his SSA rate with FERS was \$1,352.40 and without FERS was \$1,280.80.

On December 14, 2020 OWCP made a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$14,747.34 for which he was without fault, because it failed to reduce his FECA wage-loss compensation for the period September 1, 2001 through December 5, 2020 to offset his SSA age-related retirement benefits attributable to federal service. It requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a

² Appellant consistently reported his return to private sector work on financial disclosure statements (Form CA-1032) beginning August 13, 2002. On August 21, 2003 OWCP indicated that appellant was receiving compensation based on an LWEC with a pay rate effective date of September 30, 1992.

reasonable repayment schedule and advised that he could request waiver of recovery. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided an overpayment action request form and notified him that within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precouplement hearing.

OWCP included a FERS offset calculation worksheet. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period from September 1, 2001 through October 11, 2020, resulted in a total overpayment of \$14,747.34. OWCP found that from September 1 to November 30, 2001, appellant received an overpayment in the amount of \$201.00; from December 1 through 31, 2001 he received an overpayment in the amount of \$70.31; from January 1 through November 30, 2002 appellant received an overpayment in the amount of \$725.62; from December 1 through 31, 2002 he received an overpayment in the amount of \$68.27; from January 1 through November 30, 2003 appellant received an overpayment in the amount of \$701.40; from December 1 through 31, 2003 he received an overpayment in the amount of \$66.43; from January 1 to November 30, 2004 appellant received an overpayment in the amount of \$678.10; from December 1 through 31, 2004 he received an overpayment in the amount of \$64.49; from January 1 through November 30, 2005 appellant received an overpayment in the amount of \$655.15; from December 1 through 31, 2005 he received an overpayment in the amount of \$63.26; from January 1 through November 30, 2006 appellant received an overpayment in the amount of \$637.54; from January 1 to November 30, 2006, he received an overpayment in the amount of \$637.54; from December 1 through 31, 2006 appellant received an overpayment in the amount of \$61.11; from January 1 through November 30, 2007 he received an overpayment in the amount of \$627.63; from December 1, 2007 through November 30, 2008 appellant received an overpayment in the amount of \$703.44; from December 1, 2008 through November 30, 2009 he received an overpayment in the amount of \$742.43; from December 1, 2009 through November 30, 2010 appellant received an overpayment in the amount of \$742.43; from December 1, 2010 through November 30, 2011 he received an overpayment in the amount of \$742.43; from December 1, 2011 through November 30, 2012 appellant received an overpayment in the amount of \$772.22; from December 1, 2012 through November 30, 2013 he received an overpayment in the amount of \$783.35; from December 1, 2013 through November 30, 2014 appellant received an overpayment in the amount of \$794.18; from December 1, 2014 through November 30, 2015 he received an overpayment in the amount of \$807.41; from December 1, 2015 through November 30, 2016 appellant received an overpayment in the amount of \$809.62; from December 1, 2016 through November 30, 2017 he received an overpayment in the amount of \$809.82; from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$825.46; from December 1, 2018 through November 30, 2019 he received an overpayment in the amount of \$848.32; and from December 1, 2019 through October 11, 2020 appellant received an overpayment in the amount of \$745.90 for a total overpayment of \$14,747.34.

On January 4, 2021 appellant requested a decision based on the written evidence, as well as waiver of recovery of the overpayment.

OWCP received a partially completed Form OWCP-20 on January 11, 2021, wherein appellant advised that he had monthly income of \$2,551.83 including SSA benefits of \$1,207.00,

and FECA benefits of \$648.83. Appellant listed monthly expenses of \$370.00 for housing, \$300.00 for food, \$100.00 for clothing, \$300.00 for utilities, and \$150.00 for miscellaneous household expenses, medical and dental expenses, automobile expenses, and personal necessities. He listed a second mortgage of \$518.00 per month, which yielded total monthly expenses of \$1,738.00. Appellant listed his assets including a second house worth \$300,000.00, cash of \$50.00, checking account balance of \$2,000.00, and \$15,000.00 in other personal property and funds. He listed total funds of \$1,750.00. Appellant did not provide any additional financial information.

By decision dated February 3, 2021, OWCP finalized the preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$14,747.23 for the period September 1, 2001 through December 5, 2020.³ It found appellant without fault in the creation of the overpayment, but denied waiver of recovery as appellant did not fully complete the Form OWCP-20 and did not provide supporting financial documentation. OWCP required recovery of the overpayment by deducting 25 percent or \$174.00 from appellant's continuing compensation payments every 28 days.

The Board finds that OWCP has not met its burden of proof to establish that appellant received an overpayment of compensation.

OWCP determined that appellant received an overpayment of compensation during the period September 1, 2001 through December 5, 2020, because he concurrently received FECA compensation and SSA age-related retirement benefits without an appropriate offset. The case record, however, indicates that he stopped working at the employing establishment prior to April 29, 1997⁴ and that he retired from private sector employment on April 31, 2006. There is no evidence of record establishing that appellant had retirement coverage under FERS.

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA 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

³ The Board notes that, while the final overpayment determination covers the period beginning "September 2, 2001." However, this appears to be a typographical error as the preliminary notice of overpayment and the FERS offset calculation worksheet cover the period beginning September 1, 2001.

⁴ The case record before the Board does not contain any documents received or generated by OWCP prior to May 28, 2002.

⁵ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

As OWCP has not established that appellant received an overpayment of compensation during the period September 1, 2001 through December 5, 2020, the Board finds that OWCP has not met its burden of proof.⁷

IT IS HEREBY ORDERED THAT the February 3, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁷ In light of the Board's findings regarding the fact and amount of the overpayment, the remaining issues of waiver and recovery of the overpayment are rendered moot.