

Retirement System/Federal Insurance Contributions Act (CSRS/FICA) offset retirement plan. ACPS printouts dated April 17, 2003 and April 27, 2004 also listed her retirement plan as Code C.

OWCP compensation history records indicate that appellant received payments on the periodic rolls for disability as of June 16, 2002.

In a form dated July 16, 2020, Social Security Administration (SSA) completed a Federal Employees Retirement System (FERS)/ SSA dual benefits calculation transmittal and advised OWCP that appellant had concurrently received FECA benefits and FERS retirement benefits beginning August 2013. It provided the amount that she had received in retirement benefits, including the amount earned through FERS and the hypothetical amount that she would have received without FERS for August and December 2013, December 2014, December 2016, December 2017, December 2018, and December 2019.

On September 21, 2020 OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$24,186.88 because she had received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits for the period August 1, 2013 through September 12, 2020. It provided an overpayment calculation and found that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and provided her with an overpayment action request form delineating her appeal rights. It afforded her 30 days to respond.

On October 2, 2020 appellant requested a decision based on the written evidence regarding possible waiver as she was found to be without fault in the creation of the overpayment. She submitted a Form OWCP-20 to OWCP containing information regarding her income, expenses, and assets.

By decision dated October 30, 2020, OWCP finalized the September 21, 2020 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$24,186.88 for the period August 1, 2013 through September 12, 2020 because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed 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 repayment by withholding \$411.00 from appellant's continuing compensation payments every 28 days.

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 service.²

² See *Order Reversing Case, W.G.*, Docket No. 20-1389 (issued June 30, 2021); *Order Reversing Case, R.L.*, Docket No. 20-1333 (issued May 13, 2021); *J.L.*, Docket No. 19-1806 (issued July 29, 2020); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

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.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 SSA age-related 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 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 ACPS printouts listing her retirement plan as Code C, applicable to those under the CSRS/FICA offset retirement plan, rather than FERS.⁹ There is no evidence of record that appellant was enrolled under FERS. The Board finds, therefore, that the October 30, 2020 decision must be reversed.¹⁰

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 (issued February 3, 1997).

⁶ *Id.*

⁷ *Id.*

⁸ *J.L.*, *supra* note 2.

⁹ See *A.C.*, *supra* note 2.

¹⁰ See *W.G., R.L.*, *supra* note 2.

IT IS HEREBY ORDERED THAT the October 30, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 14, 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