

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

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| N.C., Appellant                   | ) |                          |
|                                   | ) |                          |
| and                               | ) | Docket No. 21-1020       |
|                                   | ) | Issued: February 4, 2022 |
| U.S. POSTAL SERVICE, BROOKLYN     | ) |                          |
| PROCESSING & DISTRIBUTION CENTER, | ) |                          |
| Brooklyn, NY, Employer            | ) |                          |
|                                   | ) |                          |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 28, 2021 appellant filed a timely appeal from a May 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$71,832.29 during the period November 1, 2015

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence following the May 27, 2021 decision. 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.*

to January 2, 2021, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On March 2, 2006 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right shoulder condition when she threw a package while in the performance of duty. She stopped work on March 3, 2006. On the reverse side of the claim form, appellant's supervisor indicated that appellant's retirement coverage was under the Civil Service Retirement System (CSRS).<sup>3</sup> On March 31, 2006 OWCP accepted the claim for right shoulder strain/sprain. It paid appellant compensation on the supplemental rolls effective April 17, 2006, and on the periodic rolls effective November 26, 2006. OWCP subsequently expanded acceptance of the claim to include right upper arm sprain, carpal tunnel syndrome, lesion of ulnar nerve, right rotator cuff syndrome, and C5-6 cervical disc radiculopathy.

On February 10, 2016 OWCP forwarded a dual compensation benefits form to SSA to obtain information as to whether an offset of compensation benefits was required for the period March 2, 2006 to the present.

On April 21, 2016 OWCP received from SSA a March 31, 2016 completed Federal Employees Retirement System (FERS)/SSA dual benefits calculation form which indicated that appellant had been in receipt of SSA age-related retirement benefits since November 2015. The form showed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning November 2015, the SSA rate with FERS was \$1,295.00 and without FERS was \$175.40; and beginning December 2015, the SSA rate with FERS was \$1,295.00 and without FERS was \$175.40.

In correspondence dated April 26, 2016, OWCP advised appellant that she had been receiving dual FERS and SSA age-related retirement benefits without an appropriate offset. It further informed her that her FECA wage-loss compensation benefits must be adjusted based on the FERS portion of SSA benefits that were attributable to federal service. OWCP explained that appellant's compensation payments would be offset by the portion of her SSA retirement benefits attributable to her federal service on account of age, resulting in a new net compensation payment of \$1,521.64, every 28 days.

On December 4, 2020 OWCP forwarded another dual benefits form to SSA to obtain information as to whether an offset of compensation benefits was required, this time for the period October 2015 to the present.

On December 16, 2020 OWCP received from SSA a December 16, 2020 completed FERS/SSA dual benefits form which indicated that appellant had been in receipt of SSA age-

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<sup>3</sup> The Board notes that initially the FERS box was checked; however, it was crossed out and the CSRS box was checked instead.

related retirement benefits since November 2015.<sup>4</sup> The form showed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning November 2015, the SSA rate with FERS was \$1,295.00 and without FERS was \$175.40; beginning December 2015, the SSA rate with FERS was \$1,295.00 and without FERS was \$175.40; beginning December 2016, the SSA rate with FERS was \$1,298.90 and without FERS was \$175.90; beginning December 2017, the SSA rate with FERS was \$1,324.80 and without FERS was \$179.40; beginning December 2018, the SSA rate with FERS was \$1,361.80 and without FERS was \$184.30; beginning December 2019, the SSA rate with FERS was \$1,383.50 and without FERS was \$187.30; and beginning December 2020, the SSA rate with FERS was \$1,401.50 and without FERS was \$189.70.

OWCP completed a FERS offset overpayment calculation form on January 14, 2021. It calculated the amount that should have been offset from appellant's wage-loss compensation from November 1, 2015 through January 2, 2021. OWCP found that effective November 1, 2015, the monthly offset was \$1,119.60, or \$1,033.48 every 28 days; effective December 1, 2016, the monthly offset was \$1,123.00, or \$1,036.62 every 28 days; effective December 1, 2017, the monthly offset was \$1,145.40 or \$1,057.29 every 28 days; effective December 1, 2018, the monthly offset was \$1,177.50 or \$1,086.92 every 28 days; effective December 1, 2019, the monthly offset was \$1,196.20 or \$1,104.18 every 28 days; effective December 1, 2020, the monthly offset was \$1,211.80 or \$1,118.58 every 28 days. It divided the 28-day offset amount to find the daily amount, which it multiplied by the number of days in each period from November 1, 2015 through January 2, 2021, to find the amount that it had overpaid appellant for each period. OWCP added the amounts for each period finding that the overpayment totaled \$71,832.29.

On January 14, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$71,832.29 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period November 1, 2015 through January 2, 2021, to offset her SSA age-related retirement benefits that were attributable to federal service. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised appellant that she could request a waiver of the overpayment. It further requested that she 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, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. No response was received.

By decision dated May 27, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$71,832.29 for the period November 1, 2015 through January 2, 2021, because she concurrently

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<sup>4</sup> In a CA-7 form dated April 17, 2006, appellant checked SSA as her retirement system and the employing establishment indicated that appellant was covered by FERS. In a CA-7 form dated August 14, 2006, appellant checked FERS as her retirement system and the employing establishment did not indicate a retirement system. In a CA-7 form dated December 4, 2006, neither appellant nor the employing establishment indicated appellant's retirement system.

received SSA age-related retirement benefits and FECA wage-loss compensation benefits without a proper offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that as of the date of the decision, no response had been received to the preliminary overpayment determination and appellant had not requested a waiver. Therefore, it required recovery of the overpayment in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>5</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>6</sup>

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 retirement benefits that are attributable to the employee's federal service.<sup>7</sup>

FECA Bulletin No. 97-09 states 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

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.<sup>9</sup>

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>10</sup> The

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

<sup>7</sup> 20 C.F.R. § 10.421(d); *see J.T.*, Docket No. 21-0010 (issued September 30, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>8</sup> FECA Bulletin No. 97-09 (February 3, 1997). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>9</sup> *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).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h), (September 2018).

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>11</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>12</sup> In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of SSA age-related retirement benefits, OWCP sends a form 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>13</sup> OWCP then issues a preliminary overpayment determination if a prohibited dual benefit was received.<sup>14</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. Herein, the evidence of record is unclear as to whether appellant was enrolled in FERS. On the Form CA-1 appellant's supervisor indicated that appellant's retirement coverage was under CSRS, rather than FERS. Additionally, the employing establishment provided differing information regarding the applicable retirement system on appellant's CA-7 forms. The Board, therefore, finds that OWCP has not established fact of overpayment.<sup>15</sup>

### CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$71,832.29 during the period November 1, 2015 to January 2, 2021, for which she was without fault.

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<sup>11</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>12</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>13</sup> *Id.*

<sup>14</sup> *J.L., supra* note 9.

<sup>15</sup> In light of the disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 27, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 4, 2022  
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