

On May 19, 1995 appellant, then a 56-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained left hand carpal tunnel syndrome as a result of pushing all-purpose containers weighing over 1,000 pounds, lifting heavy trays from an optical character recognition, and placing trays on and off the machines while in the performance of duty. She noted that she first became aware of her condition and its relationship to her federal employment on April 1, 1995. On June 8, 1995 appellant stopped work. On August 8, 1995 OWCP accepted appellant's claim for bilateral hand carpal tunnel syndrome. On March 1, 1996 appellant returned to limited-duty work. OWCP paid appellant wage-loss compensation on the daily rolls for the period June 8, 1995 through March 25, 2000 and on the periodic rolls as of February 24, 2002.

On April 16, 2021 the Social Security Administration (SSA) forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits form to OWCP, which indicated that appellant had been in receipt of SSA age-related retirement benefits since December 2002. SSA reported her SSA age-related retirement benefit rates with and without a FERS offset for the period December 2002 through December 2020.

In a FERS offset overpayment calculation worksheet dated May 17, 2021, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment in the amount of \$42,673.51.

In a preliminary overpayment determination dated May 17, 2021, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$42,673.51 because her wage-loss compensation benefits had not been reduced for the period May 1, 2002 through April 24, 2021 by the portion of her SSA age-related retirement benefits that were attributable to her federal service. It calculated the overpayment amount by determining the difference between her SSA amount with and without FERS for the stated period and adding this amount to find a total overpayment of \$42,673.51. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. Additionally, it notified her that, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. OWCP allotted 30 days for appellant to respond. No response was received.

OWCP, by decision dated June 23, 2021, finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$42,673.51 for the period May 1, 2002 through April 24, 2021 for which she was not at fault, because her FECA compensation payments were not offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP noted that appellant did respond to its preliminary overpayment determination. It required recovery of the overpayment by deducting \$415.51 from her continuing compensation payments.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of what portion, if any, of appellant's SSA age-related retirement benefits were attributable to federal service.⁴

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by an appropriate offset. Since the SSA will not report an offset amount until after the 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.⁵ 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.⁶ 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.⁷ 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/SSA dual benefits form.⁸ This form 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 with and without FERS.⁹ Following receipt of the completed form from SSA, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.¹⁰

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 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. Thus, the information solicited on the FERS/SSA dual benefits form 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 contains correspondence from a claims examiner to the employing establishment dated October 17, 1995, referencing the fact that appellant was employed on a temporary or part-time basis. The record also contains memoranda dated May 20, 1997 and December 6, 1999 from claims examiners, indicating that appellant had only casual or temporary appointments with the employing establishment. Additionally, in a rehabilitation report dated December 31, 2000, the

⁴ 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).

⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h), (September 2018).

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

⁷ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁸ *Id.*

⁹ *Id.*

¹⁰ *J.L.*, *supra* note 4.

rehabilitation counselor noted that appellant had worked in temporary and/or transitional positions with the employing establishment. OWCP has not provided evidence to establish that appellant was enrolled in FERS or that she subsequently elected FERS coverage.¹¹ The Board thus finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$42,673.51 for the period May 1, 2002 through April 24, 2021. Accordingly,

IT IS HEREBY ORDERED THAT the June 23, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 29, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ *Id.*