

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

R.S., Appellant)	
)	
and)	Docket No. 21-0647
)	Issued: April 14, 2023
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE, REDWOOD)	
NATIONAL PARK, Crescent City, CA,)	
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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On March 19, 2021 appellant filed a timely appeal from a February 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0647.

OWCP accepted that on August 30, 1990 appellant, then a 42-year-old seasonal employee, sustained a chest wall contusion, closed fracture of two ribs, closed fracture of the dorsal vertebra without a spinal cord injury, sprained ribs, and thoracic spine pain while in the performance of duty.¹ It paid appellant wage-loss compensation on the periodic rolls commencing November 28, 1993. By letter dated May 24, 1994, the employing establishment submitted a November 19, 1993 Notification of Personal Action (Standard Form 50-B) which listed appellant's retirement plan as Federal Insurance Contributions Act (FICA).

On December 15, 2020 the Social Security Administration (SSA) forwarded a completed Federal Employees Retirement System (FERS)/SSA dual benefits form to OWCP. SSA reported

¹ The record indicates that appellant was a seasonal employee, who worked from March to November. Appellant is no longer employed by the employing establishment.

appellant's age-related retirement benefit rates as follows: beginning June 2010 appellant's SSA rate with FERS was \$944.30 and without FERS was \$744.20; beginning December 2011 his SSA rate with FERS was \$978.20 and without FERS was \$771.00; beginning December 2012 his SSA rate with FERS was \$994.90 and without FERS was \$784.00; beginning March 2013 there was no FERS offset because he received disability compensation through February 2014; beginning March 2014 his SSA rate with FERS was \$1,431.90 and without FERS was \$1,245.70; beginning December 2014 his SSA rate with FERS was \$1,456.20 and without FERS was \$1,266.80; beginning December 2015 his SSA rate with FERS was \$1,456.20 and without FERS was \$1,266.80; beginning December 2016 his SSA rate with FERS was \$1,460.50 and without FERS was \$1,270.60; beginning December 2017 his SSA rate was \$1,489.70 and without FERS was \$1,296.00; beginning December 2018 his SSA rate was \$1,531.40 and without FERS was \$1,332.20; beginning December 2019 his SSA rate was \$1,555.90 and without FERS was \$1,353.50; and beginning December 2020 his SSA rate was \$1,576.10 and without FERS was \$1,371.00.

OWCP, by letter dated December 30, 2020, notified appellant that his compensation would be offset by the portion of his SSA age-related retirement benefits attributable to his federal service. It indicated that he would thereafter receive net FECA wage-loss compensation of \$1,776.52 every 28 days.

By preliminary overpayment determination dated December 30, 2020, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$22,690.34 because his wage-loss compensation benefits had not been reduced for the period June 1, 2010 through January 2, 2021 by the portion of his SSA benefits that were attributable to his federal service. It calculated the overpayment amount by determining the difference between his SSA age-related retirement benefit with and without FERS for the stated period and adding this amount to find a total overpayment of \$22,690.34. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he submit a completed Form OWCP-20 to determine a fair recovery method, and advised him that he could request waiver of recovery of the overpayment. OWCP also requested that appellant complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit financial documentation, including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to support his reported income and expenses. Additionally, OWCP notified appellant that he could request a final decision based on the written evidence or a precoupment hearing. It afforded him 30 days to respond. No response was received.

By decision dated February 26, 2021, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$22,690.34 for the period June 1, 2010 through January 2, 2021 because the SSA/FERS offset was not applied to payments for the period June 1, 2010 through January 2, 2021. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that no response was received following the preliminary determination. It required recovery of the overpayment in full.

The Board, having duly considered this matter, finds that OWCP improperly determined that appellant was on FERS.

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS offset amount. Since 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.² 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.³ 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.⁴ 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 an SSA/FERS dual benefits form.⁵ This form is sent to SSA and the completed form is returned to OWCP setting forth the effective dates and rates of appellant's SSA age-related retirement benefits with and without FERS.⁶ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁷

The Board has observed, however, that not all federal employees are enrolled in FERS.⁸ 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. As such, the information solicited on the SSA/FERS 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.⁹

Herein, the evidence of record is clear that appellant was not enrolled in FERS. Appellant's November 19, 1993 Standard Form 50-B establishes that he was covered only under FICA during his federal service. The Board thus finds that OWCP improperly determined that appellant

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h) (September 2018).

³ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁴ FECA Bulletin No. 97-09 (February 3, 1997).

⁵ *Id.*

⁶ *Id.*

⁷ See *supra* note 3.

⁸ *Id.*

⁹ *Order Reversing Case, T.S.*, Docket No. 21-1376 (issued April 8, 2022).

received an overpayment of compensation in the amount of \$22,690.34 for the period June 1, 2010 through January 2, 2021. As such, the February 26, 2021 decision must be reversed.¹⁰

IT IS HEREBY ORDERED THAT the February 26, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 14, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁰ See *Order Reversing Case, B.W.*, Docket No. 22-0042 (issued July 29, 2022). See also *C.R.*, Docket No. 21-1354 (issued July 13, 2022); *Order Reversing Case, L.G.*, Docket No. 21-1321 (issued April 5, 2022); *Order Reversing Case, W.G.*, Docket No. 20-1389 (issued June 30, 2021); *J.L.*, Docket No. 19-1806 (issued July 29, 2020).