

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

D.T., Appellant)	
)	
and)	
)	Docket No. 22-1314
)	Issued: April 11, 2023
DEPARTMENT OF HOUSING & URBAN)	
DEVELOPMENT, MEMPHIS FIELD OFFICE,)	
Memphis, TN, Employer)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On August 27, 2022 appellant filed a timely appeal from a March 2, 2022 merit decision of the Office of Workers’ Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-1314.

On May 15, 2009 appellant, then a 66-year-old public housing revitalization specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2009 he sustained “trauma to body as a whole” and mental shock after being assaulted while in the performance of duty. He stopped work on May 14, 2009. On the reverse side of the claim form, J.G., the field office director at the employing establishment, noted that appellant’s retirement coverage was under Civil Service Retirement System (CSRS). By decision dated October 1, 2009, OWCP accepted appellant’s claim for contusion to right elbow, contusion to left hand, episode of major depression, and episode of post-traumatic stress disorder. It paid him wage-loss compensation

¹ Under the Board’s *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP’s March 2, 2022 decision was August 29, 2022. Since using September 1, 2022, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The postmark date was August 27, 2022, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

on the supplemental rolls, effective October 11, 2009 and on the periodic rolls, effective February 14, 2010.

On February 11, 2021 OWCP forwarded a Federal Employees Retirement System (FERS) and Social Security Administration (SSA) dual benefits calculation form to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

On February 25, 2021 OWCP received a completed FERS/SSA dual benefits form from SSA. The form indicated that appellant received SSA age-related retirement benefits as of October 2008 and provided SSA age-related benefit rates with FERS offset and without FERS offset from October 2008 through December 2020.

On April 2, 2021, OWCP issued a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$183,380.45 for the period October 1, 2008 through March 27, 2021 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that he 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 payment method and advised him that he could request a waiver of the overpayment, and that, within 30 days of the date of the letter, he could request a final decision based on the written evidence, or a precoupment hearing.

By decision dated July 23, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$183,380.45 for the period October 1, 2008 through March 27, 2021. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment.

By decision dated September 10, 2021, OWCP vacated the July 23, 2021 overpayment decision finding that the period and amount of overpayment were incorrect. It noted that appellant had no entitlement to wage-loss compensation prior to his date of injury of May 13, 2009, and thus, there was no period of dual entitlement prior to May 13, 2009.

In a FERS offset overpayment calculation worksheet dated December 21, 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 \$172,336.27 for the period October 11, 2009 through March 27, 2021.

On December 21, 2021 OWCP issued a preliminary overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$172,336.27, for the period October 11, 2009 through March 27, 2021, because it had failed to reduce his FECA wage-loss compensation benefits by the portion of his SSA benefits that were attributable to federal service without an appropriate offset. It further advised him of its preliminary determination that he was not at fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial

documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing.

In an overpayment action request form dated January 19, 2022, appellant requested that OWCP make a decision based on the written evidence regarding possible waiver of this overpayment. On a completed Form OWCP-20 dated January 19, 2022, he reported a total monthly income of \$7,776.00, which included \$2,232.00 in SSA benefits, \$1,348.00 in Thrift Savings Plan annuity, and \$4,196 in OWCP benefits. Appellant noted total monthly expenses of \$9,774.00, which included \$1,397.00 for mortgage and property tax, \$755.00 for food, \$300.00 for clothing, \$461.00 for utilities, and \$3,278.00 for “other” expenses. He also indicated that he had monthly payments of \$600.00 and \$388.00 to banking institutions and \$2,595.00 of miscellaneous personal expenses. Appellant reported that he had cash on hand of \$650.00 and a checking account balance of \$3,142.00. He provided over 300 pages of financial documentation, including receipts, statements, and tax documents.

By decision dated March 2, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of \$172,336.27 for the period October 11, 2009² through March 27, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without a proper offset. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because his monthly income exceeded his monthly expenses by more than \$50.00. OWCP required recovery of the overpayment by deducting \$800.00 every 28 days from appellant’s 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.³

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.⁴ 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.⁵ FECA Bulletin No. 97-09

² The final overpayment decision erroneously noted a date of October 1, 2008. The Board considers this harmless error, however, as the December 21, 2021 preliminary overpayment determination and overpayment calculation memorandum correctly noted a date of October 11, 2009.

³ 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. 29-1806 (issued July 29, 2020).

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h) (September 2018).

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

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 concurrent receipt of FECA benefits and federal retirement is a prohibited dual benefit.⁶ In identifying the fact and amount of 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.⁷ 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.⁸ Following receipt of the completed form from SSA, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁹

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.¹⁰

Herein, OWCP determined that appellant received an overpayment of compensation during the period October 11, 2009 through March 27, 2022, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The evidence of record, however, contains conflicting evidence with regard to appellant's retirement coverage. An employing establishment official indicated on the reverse side of the May 15, 2009 Form CA-1 that appellant's retirement plan was CSRS, not FERS. At least two claims for compensation (Forms CA-7) from 2009 indicated that his retirement system was "SSA" on the front of the form, and FERS on the back of the form. Other Forms CA-7 from 2009 and 2010 had no retirement system on the front of the form, and FERS on the back of the form. OWCP has not provided evidence to establish that appellant was enrolled in FERS or that he subsequently elected FERS coverage. The Board thus finds that OWCP improperly determined that he received an overpayment of compensation in the amount of \$172,336.27 for the period October 11, 2009 through March 27, 2021.

As OWCP has not established that appellant received an overpayment of compensation during the period October 11, 2009 through March 2, 2022, the Board finds that OWCP has not met its burden of proof. Accordingly,

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

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *A.A., Order Reversing Case*, Docket No. 21-1181 (issued May 13, 2022). *See G.L.*, Docket No. 20-1285 (issued April 20, 2022); *G.T.*, Docket No. 21-0858 (issued December 6, 2021).

IT IS HEREBY ORDERED THAT the March 2, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 11, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board