

<sup>1</sup> The Board notes that, following the September 16, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

On June 22, 2020 OWCP forwarded a Federal Employees Retirement System (FERS)/Social Security Administration (SSA) dual benefits calculation form to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

On July 13, 2020 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA advised that, effective June 2009, appellant reached retirement age and became eligible for SSA age-related retirement benefits. SSA calculated her SSA age-related retirement benefit rates with and without a FERS offset from June 1, 2009 through December 1, 2019.

In a FERS offset overpayment calculation worksheet dated July 28, 2020, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment amount of \$55,859.74.

On August 4, 2020 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$55,859.74, for the period June 1, 2009 through July 18, 2020, because she received SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. 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 payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she 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 further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoupment hearing.

On September 4, 2020 appellant submitted a letter dated August 29, 2020 and asserted that she disagreed with the overpayment and requested waiver of recovery of the overpayment. She also noted that she believed that the SSA benefits received were from employment in the private sector.

Appellant completed a Form OWCP-20 on August 29, 2020 and attached supporting financial documentation.

By decision dated September 16, 2020, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$55,859.74 for the period June 1, 2009 through July 18, 2020, because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her 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 be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$1,400.00 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, if any, of appellant's SSA age-related retirement benefits were attributable to federal service.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</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>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Following receipt of the completed form from SSA, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>8</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 Civil Service Retirement System (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. 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 case record contains a Notification of Personnel Action Form, Standard Form 50, dated April 27, 1997, in which her retirement system is listed as FICA and CSRS (Partial). OWCP has not

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<sup>2</sup> See *Order Reversing Case, A.A.*, Docket No. 21-1181 (issued May 13, 2022); *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); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1h (September 2020).

<sup>4</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>5</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 4.

provided evidence to establish that appellant was enrolled in FERS or that she subsequently elected FERS coverage. The Board thus finds that OWCP improperly determined that she received an overpayment of compensation in the amount of \$55,859.74 for the period June 1, 2009 through July 18, 2020. Accordingly,

**IT IS HEREBY ORDERED THAT** the September 16, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 15, 2023  
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