

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

N.T., Appellant	)	
	)	
and	)	Docket No. 21-1288
	)	Issued: July 14, 2023
U.S. POSTAL SERVICE, HOLLY HILL POST	)	
OFFICE, Holly Hill, SC, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 23, 2021 appellant filed a timely appeal from a February 23, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards assigned Docket No. 21-1288 to the appeal.<sup>2</sup>

On June 11, 2001 appellant, then a 46-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2001 she experienced increased soreness and discomfort in the right elbow and upper arm when casing mail and driving her route while in the

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<sup>1</sup> The Board notes that, following the February 23, 2021 decision, OWCP received additional evidence. 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.*

<sup>2</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's 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 February 23, 2021, the date of OWCP's last decision, was August 22, 2021, which was a Sunday. Pursuant to 20 C.F.R. § 501.3(f)(2), when the last day of the period so computed is a Saturday, Sunday, or Federal holiday, the period runs to the close of the next business day, which would be Monday, August 23, 2021. The appeal was received on Monday, August 23, 2021, rendering it timely.

performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant was enrolled in the Civil Service Retirement System (CSRS). OWCP accepted the claim for right rotator cuff tendinitis. It paid appellant wage-loss compensation on the supplemental rolls, effective March 9, 2002, and on the periodic rolls, effective April 15, 2007.

On February 4, 2020 OWCP forwarded a Federal Employees Retirement System (FERS)/ Social Security Administration (SSA) dual benefits form to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits. It listed the computation period as December 2016 to the present.

On March 2, 2020 OWCP received the completed FERS/SSA dual benefits form, wherein SSA reported her SSA age-related retirement benefit rates with and without a FERS offset beginning July 2019.

In a FERS offset overpayment calculation worksheet dated March 12, 2020, 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 \$7,343.39.

On March 18, 2020 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$7,343.39 for the period July 1, 2019 through February 29, 2020 because the FERS/SSA offset was not applied to payments for this period. It included the 28-day FERS offset calculations from July 1, 2019 through February 29, 2020 for her review. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request waiver of recovery of the overpayment. OWCP requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. OWCP provided an overpayment action request form and further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request a final decision based on the written evidence or a prerecoupment hearing.

In an April 18, 2020 overpayment action request form, appellant requested that OWCP issue a decision based on the written evidence. She requested waiver of recovery of the overpayment because she disagreed with the fact and amount of overpayment and because she was found to be without fault in the creation of the overpayment. On a completed Form OWCP-20 dated April 18, 2020, appellant reported monthly income of between \$1,900.00 and \$2,100.00 for herself and approximately \$2,400.00 for her husband. She also listed her usual monthly expenses totaling \$3,214.00. Appellant indicated that she owned 14 acres of land shared with her sisters. She stated on the form, "I am not a FERS employee." No supporting financial documentation was received.

By decision dated February 23, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$7,343.39 because the FERS/SSA offset had not been applied to payments for the period July 1, 2019 through February 29, 2020. It further found that she was without fault in the creation of the

overpayment, but denied waiver of recovery, because she had not provided sufficient information to support the waiver. OWCP required recovery of the overpayment in full.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of whether appellant's SSA age-related retirement benefits were attributable to federal employment.<sup>3</sup>

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/SSA 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.<sup>4</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>5</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 concurrent receipt of FECA benefits and federal retirement is a prohibited dual benefit.<sup>6</sup> 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 offset calculation worksheet.<sup>7</sup> This calculation worksheet 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 without FERS and the effective date and rate of SSA benefits with FERS.<sup>8</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>9</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 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.<sup>10</sup> Thus, the information solicited on the

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<sup>3</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); *Order Reversing Case, J.L.*, Docket No. 19-1806 (issued July 29, 2020); see also *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 - Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1h (September 2020).

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

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

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

<sup>8</sup> *Id.*

<sup>9</sup> *J.L.*, *supra* note 3.

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012).

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.<sup>11</sup>

Herein, the evidence of record does not establish that appellant was enrolled in FERS. On her June 11, 2001 Form CA-1 the employing establishment indicated that she was enrolled in CSRS. Additionally, on her Form OWCP-20 dated April 18, 2020, appellant stated, “I am not a FERS employee.” OWCP has not provided evidence to establish that she was enrolled in FERS or that she subsequently elected FERS coverage.<sup>12</sup> The Board, thus, finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$7,343.39 for the period July 1, 2019 through February 29, 2020. Accordingly,

**IT IS HEREBY ORDERED THAT** the February 23, 2021 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: July 14, 2023  
Washington, DC

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

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

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

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<sup>11</sup> See *Order Reversing Case, P.C. (R.C.)*, Docket No. 20-1546 (issued May 4, 2021).

<sup>12</sup> See generally 5 U.S.C. § 8401 *et seq.*; 5 C.F.R. Part 846.