

On June 10, 2022 SSA completed the FERS/SSA dual benefits form, which indicated that appellant received disability benefits from December 2015 through October 2021. It further indicated that appellant had been in receipt of age-related SSA benefits since November 2021. Beginning November 2021, the SSA rate with FERS was \$748.00 and without FERS was \$40.00. Beginning December 2021, the SSA rate with FERS was \$793.00 and without FERS was \$42.50.

On June 22, 2022 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from November 1, 2021 through May 21, 2022 and computed a total overpayment amount of \$4,955.80.

In a preliminary overpayment determination dated June 22, 2022, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$4,955.80 for the period November 1, 2021 through May 21, 2022, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It determined 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 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 preresoupment hearing.

In an overpayment action request form dated July 19, 2022, appellant disagreed with the overpayment and requested waiver because he was found to be without fault in the creation of the overpayment. He requested that OWCP issue a decision based on the written evidence. Appellant submitted a Form OWCP-20 of even date and reported total monthly income of \$15,347.00, total monthly expenses of \$14,549.00, and additional assets valued at \$20,200.00. He stated that he had been misinformed by both OWCP and SSA regarding his benefits and overpayments. Appellant submitted additional supporting financial documentation.

On August 1, 2022 OWCP received a July 25, 2022 letter from SSA regarding a request to withdraw appellant's claim for age-related retirement benefits. It indicated that it could not pay benefits beginning July 2022 and advised him that he would have to repay the \$6,299.00 paid on the claim from November 2021 through June 2022.

By decision dated August 1, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$4,955.80 for the period November 1, 2021 through May 21, 2022, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It further found that he 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 \$127.07 every 28 days from appellant's continuing compensation payments.

The Board has duly considered the matter and finds that this case is not in posture for decision. In the case of *William A. Couch*,² the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on August 1, 2022 appellant submitted a letter from SSA regarding his age-related retirement benefits commencing November 2021. OWCP, however, did not review this additional evidence in its August 1, 2022 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.³

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ As OWCP did not consider all of the evidence properly before it when it issued the August 1, 2022 final overpayment determination, the overpayment decision must be reversed.⁵

IT IS HEREBY ORDERED THAT the August 1, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 2, 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

² 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁴ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 2.

⁵ *See D.G.*, Docket No. 11-923 (issued November 15, 2011).