

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

M.S., Appellant)	
)	
and)	Docket No. 22-0775
)	Issued: October 17, 2023
DEPARTMENT OF THE AIR FORCE, FORT)	
SAM HOUSTON, TX, Employer)	
)	

Appearances: Case Submitted on the Record
George W. Hacker, for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 22, 2022 appellant filed a timely appeal from a March 29, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0775.

The issues on appeal before the Board relate to OWCP's March 29, 2022 decision, finding an overpayment of compensation in the amount of \$19,057.53 for the period July 1, 2020 through January 1, 2022, for which appellant was without fault, due to her alleged concurrent receipt of Federal Employees' Compensation Act² (FECA) wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset. OWCP also

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

denied waiver of recovery of the overpayment and required repayment of the overpayment by deducting \$841.11 from her continuing compensation payments every 28 days.

The Board finds that OWCP failed to properly develop the underlying issue of whether appellant's SSA age-related retirement benefits were attributable to federal employment.³

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the Federal Employees Retirement System (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 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 the 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.⁷ 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.⁸ Following receipt of the purported SSA calculations, 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 (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.¹⁰

³ See *P.R.*, Docket No. 20-0851 (issued January 29, 2021); see also *L.A.*, Docket No. 20-0949 (issued December 2, 2020).

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

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

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

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See *supra* note 4 at Chapter 2.812.9c (May 2012).

The information solicited on the FERS offset calculation worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.¹¹

OWCP accepted that on April 12, 1994 appellant, then a 39-year-old housing manager, sustained lumbosacral sprain, neck sprain, closed dislocation of cervical vertebra, and sprain of right knee falling through a broken chair while in the performance of duty.¹²

A Standard Form (SF) 2809 (Federal Health Benefits Registration Form) dated July 5, 1979 indicated that appellant's federal civilian service had commenced by that date. Appellant, thus, began her federal civilian service prior to January 1, 1987, the effective date of FERS.¹³ Beginning on July 16, 2009 she indicated on multiple EN-1032 forms that she received SSA benefits as part of an annuity for federal service. In an October 13, 2021 memorandum to OWCP, G.D., an employing establishment injury compensation management adviser, stated that appellant "is a FERS employee." However, the record does not contain substantive proof, such as a Notification of Personnel Action (Standard Form (SF) 50), indicating that appellant converted her retirement coverage from CSRS to FERS as of the time of the alleged overpayment.¹⁴

As noted, an offset is not required if the employee is covered under CSRS rather than FERS. If OWCP cannot determine what retirement system the claimant is under, it should send a letter to both the claimant and the Office of Personnel Management (OPM) requesting pertinent information.¹⁵

The Board finds that, in light of appellant's pre-1987 federal employment history, the evidence does not establish that she was covered under FERS or received a prohibited dual benefit.¹⁶ OWCP did not sufficiently investigate whether she was covered under either CSRS or CSRS Interim/Offset,¹⁷ or FERS.¹⁸

Given the lack of definitive information regarding appellant's retirement coverage, the case must be remanded to OWCP for further development. On remand, OWCP should consult with OPM regarding her retirement coverage. To the extent that appellant's monthly SSA age-related

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

¹² The traumatic injury claim form (Form CA-1) is not contained in the case record.

¹³ 5 U.S.C. § 8402(b)(2)(B); see also *A.S.*, Docket No. 17-1459 (issued December 22, 2017).

¹⁴ See *id.* at § 8402.

¹⁵ *Supra* note 4 at Chapter 2.812.9c (May 2012).

¹⁶ See *A.S.*, *supra* note 13; *G.W.*, Docket No. 09-1211 (issued January 6, 2010).

¹⁷ CSRS Interim/Offset was a precursor to FERS that required contributions to both CSRS and Social Security's Old-Age, Survivors, and Disability Insurance (OASDI). It generally applied to certain new hires or former CSRS-covered employees who had been separated from service for at least one year and rehired after December 31, 1983.

¹⁸ As noted above, the record does not include an SF 50 indicating whether appellant was covered under CSRS, CSRS Offset, or FERS.

retirement benefits were based in part on her FERS-based federal service, OWCP should also obtain a complete earnings history and benefits payment history from SSA prior to issuing another preliminary and/or final overpayment determination. Accordingly,

IT IS HEREBY ORDERED THAT the March 29, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 17, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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