

through June 19, 2021 because the FERS/Social Security Administration (SSA) offset was not applied to payments for this period. It determined that appellant was without fault in the creation of the overpayment.

In a July 7, 2021 letter, appellant disagreed with the fact of overpayment and stated that he was covered by the Civil Service Retirement System (CSRS). He also submitted a November 11, 2002 leave and earnings statement from the employing establishment indicating that he was covered by CSRS, as well as leave and earnings statements dated July 26, December 13, 2003, and January 24, 2004 indicating that he was covered by CSRS Offset.

In a letter dated August 3, 2021, OWCP notified appellant that it had liquidated and closed his overpayment account, finding that the evidence of record indicated he was covered by CSRS, not FERS.

On August 16 and September 17, 2021 OWCP requested information from the Office of Personnel Management (OPM) regarding appellant's retirement coverage. OPM responded on October 21, 2021, indicating that appellant was covered by CSRS Offset and that he had not converted to FERS.

On June 27, 2022 OWCP forwarded a FERS/SSA dual benefits form to SSA for completion to obtain information regarding appellant's receipt of SSA age-related retirement benefits. It listed the computation period as January 1, 2016 through June 17, 2022.

On July 14, 2022 OWCP received the completed FERS/SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without a FERS offset beginning April 2019.

On September 29, 2022 OWCP requested clarification from SSA regarding its July 14, 2022 response. It included an SSA dual benefits form to obtain information regarding appellant's receipt of SSA age-related retirement benefits with and without federal service. It listed the computation period as January 1, 2016 through June 17, 2022.

On November 28, 2022 OWCP received the completed SSA dual benefits form, wherein SSA reported appellant's SSA age-related retirement benefit rates with and without federal service beginning April 2019.

In a FERS offset overpayment calculation worksheet dated January 11, 2023, 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 \$45,523.42.

In a preliminary overpayment determination dated January 23, 2023, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$45,523.42 for the period April 1, 2019 through December 31, 2022 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for that period without appropriate offset. It included the 28-day FERS offset calculations from April 1, 2019 through December 31, 2022 for his review. OWCP determined that appellant was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him

that he 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. Additionally, it provided an overpayment action request form and further notified him that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence or a prerecoumment hearing.

In a February 16, 2023 letter, appellant contested the fact of overpayment because he was never covered by FERS. He asserted that he had been enrolled in CSRS and CSRS Offset since 1980. Appellant submitted additional leave and earnings statements showing that he was covered by CSRS Offset.

By decision dated April 18, 2023, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$45,523.41 for the period April 1, 2019 through December 31, 2022 because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery, because he had not submitted any financial evidence to support the waiver. OWCP required recovery of the overpayment by deducting \$750.00 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 whether appellant's SSA age-related retirement benefits were attributable to federal employment.²

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by an appropriate 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.³ 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.⁴ 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.⁵ 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

² 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); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

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

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

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); see also *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

offset calculation worksheet.⁶ 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.⁷ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁸

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 or CSRS Offset. 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.⁹ Thus, 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.¹⁰

Here, the evidence of record does not establish that appellant was covered under FERS. Rather the evidence establishes that he was covered under CSRS or CSRS Offset during his federal service. As such, the Board finds that the April 18, 2023 decision must be reversed.¹¹ Accordingly,

⁶ *Id.*

⁷ *Id.*

⁸ *J.L., supra* note 2.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012).

¹⁰ See *Order Reversing Case, P.C. (R.C.)*, Docket No. 20-1546 (issued May 4, 2021).

¹¹ See *Order Reversing Case, R.L., supra* note 2.

IT IS HEREBY ORDERED THAT the April 18, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 2, 2024
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