

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Theodore, AL, Employer**

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**Docket No. 23-1115
Issued: January 26, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On August 24, 2023 appellant filed a timely appeal from a June 29, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1115.

On January 25, 1990 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 1990 she picked up a package and injured her lower back while in the performance of duty. She stopped work on January 30, 1990. OWCP accepted the claim for herniated disc at L4-5. It paid wage-loss compensation for total disability on the periodic rolls commencing November 26, 2006.

A February 28, 1992 notification of personnel action (Standard Form (SF)-50), notes appellant's retirement system as Code 5, Civil Service Retirement System (CSRS) offset, with a retirement compensation date of May 16, 1981.

¹ The Board notes that, following the June 29, 2023 decision, OWCP received additional evidence. 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.*

On October 11, 25 and December 1, 2022 OWCP sent FERS/SSA dual benefits forms to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

In February 15, 2023 FERS offset overpayment calculation worksheet, OWCP calculated appellant's FERS/SSA offset for each month from February 1, 2013 through January 28, 2023 for a total overpayment of \$138,309.00.

On April 5, 2023 OWCP issued a preliminary overpayment determination, notifying appellant that she had received an overpayment of compensation in the amount of \$138,309.00 because her wage-loss compensation benefits had not been reduced for the period February 1, 2013 through January 28, 2023 by the portion of her SSA benefits that were attributable to her federal service, and that this constituted a prohibited dual benefit. It determined that she was without fault in the creation of the overpayment. OWCP requested that she complete an overpayment action request form and an 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. Additionally, it 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 April 13, 2023 appellant requested that OWCP render a decision based on the written evidence. She disagreed that the overpayment occurred, disagreed with the amount of the overpayment, and requested waiver of recovery of the overpayment as she was found without fault. Appellant asserted that she was not aware that OWCP had incorrectly paid her and that she would experience financial hardship in repaying the overpayment. She provided a completed Form OWCP-20 and supporting financial documentation.

By decision dated June 29, 2023, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$138,309.00, compromised to \$29,120.45 for the period February 1, 2014 through January 28, 2023 because her compensation payments were not offset by the portion of her SSA age-related retirement benefits 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 she had not provided the financial information necessary to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment in the amount of \$200.00 from her continuing compensation benefits 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.²

² See *Order Reversing Case, M.A.*, Docket No. 23-0606 (issued August 29, 2023); *Order Reversing Case, M.E.*, Docket No. 21-0624 (issued February 15, 2023); *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).

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.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 receipt of FECA benefits and federal retirement concurrently 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/SSA dual benefits form.⁶ 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.⁷ Following receipt of the completed form from SSA, 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 the 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 February 28, 1992 in which her retirement system is listed as Code 5, CSRS offset. OWCP has not 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 \$138,309.00 for the period February 1, 2014 through January 28, 2023. Accordingly,

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).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

IT IS HEREBY ORDERED THAT the June 29, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board