

<sup>1</sup> The Board notes that following the August 9, 2024 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.*

On January 13, 2000 the employing establishment submitted a personnel record to OWCP indicating that appellant's retirement coverage was under the Federal Insurance Contributions Act (FICA) and the Civil Service Retirement System (CSRS).

On June 14, 2023 OWCP provided the Social Security Administration (SSA) with a Federal Employees Retirement System (FERS)/SSA dual benefits form, requesting information concerning any potential overpayment.

OWCP received a completed FERS/SSA dual benefits form from SSA dated July 12, 2023. The form reported appellant's SSA age-related retirement benefit rates with and without FERS from July 2021 through December 2022.

In an August 11, 2023 letter, OWCP notified appellant that his wage-loss compensation would be offset by the portion of his SSA age-related retirement benefits attributable to his federal service. It advised him that his new net wage-loss compensation payments would be \$2,290.21.

In a preliminary overpayment determination dated August 16, 2023, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$19,387.51 for the period July 1, 2021 through August 12, 2023, because it had failed to reduce his wage-loss compensation payments by the portion of his SSA age-related retirement benefits attributable to his federal service. It further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), to determine a reasonable repayment method and advised that he could request waiver of recovery of the overpayment. Additionally, OWCP notified him that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

On September 18, 2023 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He also requested waiver of recovery of the overpayment because he was found to be without fault in the creation of the overpayment. Appellant attached a completed Form OWCP-20. A prerecoupment hearing was held on January 3, 2024.

By decision dated February 9, 2024, OWCP's hearing representative noted that the employing establishment indicated that appellant's retirement was CSRS and FICA. Nevertheless, she finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$19,387.51 for the period July 1, 2021 through August 12, 2023. The hearing representative also found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. She required recovery of the overpayment by deducting \$100.89 from his continuing compensation payments every 28 days.

The Board, having duly considered this matter, finds that OWCP failed to establish that appellant received an overpayment of compensation as a result of receiving prohibited FERS/SSA dual benefits.

The offset provision of 5 U.S.C. § 8116(d)(2) is specifically limited to the federal service of employees covered by the retirement system in 5 U.S.C. Chapter 84 regarding FERS.<sup>2</sup>

FECA Bulletin No. 97-09 provides that FECA benefits must 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>3</sup> 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. This FERS/SSA dual benefits 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 without FERS and the effective date and rate of SSA benefits with FERS. Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.

The Board has also 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 eligible 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 wage-loss compensation and SSA age-related retirement benefits. Here, the evidence of record does not establish that appellant was covered under FERS. Rather, the case record indicates that his retirement coverage was under CSRS and FICA during his federal service. As such, the Board finds that the February 9, 2024 overpayment determination must be reversed.<sup>4</sup> Accordingly,

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<sup>2</sup> 5 U.S.C. § 8401 *et seq.*

<sup>3</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>4</sup> See *Order Reversing Case, T.H.*, Docket No. 24-0837 (issued November 1, 2024) and *Order Reversing Case, A.W.*, Docket No. 23-1115 (issued January 26, 2024) (dual benefit overpayment reversed where appellant's retirement system was listed as CSRS offset); *Order Reversing Case, R.S.*, Docket No. 21-0647 (issued April 14, 2023) (dual benefit overpayment reversed where appellant was covered only under FICA); *Order Reversing Case, M.E.*, Docket No. 21-0624 (issued February 15, 2023) (dual benefit overpayment reversed where appellant's retirement system was listed as FICA and CSRS (partial), and there was no evidence in the record that appellant was enrolled in FERS).

**IT IS HEREBY ORDERED THAT** the February 9, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 1, 2025  
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