

<sup>2</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.*

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision and orders are incorporated herein by reference. The relevant facts are as follows.

On September 15, 2000 appellant, then a 53-year-old attorney/advisor filed an occupational disease claim (Form CA-2) alleging that he developed psychological conditions on January 1, 1995 due to factors of his employment. He stopped work in May 2001. OWCP accepted the claim and paid appellant wage-loss compensation on the periodic rolls as of January 23, 2005.<sup>4</sup>

An April 23, 2000 Notification of Personnel Action (Standard Form (SF)-50) indicated that appellant was covered by retirement plan C, with deductions for the Federal Insurance Contributions Act (FICA) and for the Civil Service Retirement Act (CSRS). The form indicated that appellant had "coverage by FICA and CSRS at the transitional withholding rate."

On August 19, 2022 OWCP provided the Social Security Administration (SSA) with a Federal Employees Retirement System (FERS)/SSA dual benefits form, requesting information concerning any potential overpayment.

On August 31, 2022 SSA completed the FERS/SSA dual benefits form, reporting appellant's SSA age-related retirement benefit rates with and without FERS from January 2010 through December 2021.

In a September 16, 2022 internal e-mail, an OWCP regional office director related that an August 21, 1992 SF-50 indicated that appellant covered by the CSRS, not FERS.

On June 14, 2023 OWCP again provided SSA with a FERS/SSA dual benefits form, requesting information concerning any potential overpayment.

On July 25, 2023 SSA completed the dual benefits form, and reported appellant's SSA age-related retirement benefit rates with and without FERS from January 2015 through December 2022.

In an August 31, 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 that his new net wage-loss compensation payments would be \$7,506.09.

On September 12, 2023 OWCP requested that SSA clarify why the rates reported on August 31, 2022 differed from those reported on July 25, 2023.

In a letter dated September 15, 2023, counsel informed OWCP that appellant was enrolled in CSRS, not FERS, and as such no offset was required.

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<sup>3</sup> Docket No. 10-1308 (issued September 15, 2011); *Order Remanding Case*, Docket No. 08-2439 (issued December 22, 2008); *Order Remanding Case*, Docket No. 06-1770 (issued June 8, 2007).

<sup>4</sup> OWCP accepted the claim for anxiety state, unspecified.

In a December 12, 2023 FERS/SSA dual benefits form, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS from October 2009 through December 2023. On December 17, 2023 SSA explained that the prior figures provided on August 21, 2022 and July 25, 2023 were incorrect, and confirmed that the figures provided on December 12, 2023 were correct.

In a January 10, 2024 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 found that his new net wage-loss compensation payments would be \$7,379.20.

In a February 1, 2024 letter, counsel again asserted that appellant was enrolled in CSRS rather than FERS, and therefore no offset was required.

OWCP completed a FERS offset overpayment calculation worksheet on February 23, 2024 and determined that appellant had received an overpayment of compensation for the period February 1, 2012 through August 12, 2023 in the amount of \$97,602.81.

On February 23, 2024 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$97,602.81 had been created for the period February 1, 2012 through August 12, 2023, because appellant concurrently received wage-loss compensation under the Federal Employees' Compensation Act<sup>5</sup> (FECA) and SSA age-related retirement 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 repayment method and advised that he could request waiver of the overpayment. Additionally, it 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 prerecoument hearing.

On March 20, 2024 appellant, through counsel, requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review. He again asserted that appellant was covered by CSRS, not FERS and that his FECA wage-loss compensation was therefore not subject to offset. A prerecoument hearing was held on June 6, 2024.

By decision dated August 9, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that OWCP properly determined that appellant received an overpayment in the amount of \$97,602.81, for the period February 1, 2012 through August 12, 2023. She further determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery, noting that appellant failed to provide the requested financial information. The hearing representative required recovery of the overpayment by deducting \$1,899.85, from appellant's 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.

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<sup>5</sup> 5 U.S.C. § 8101 *et seq.*

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>6</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. 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 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 contains a Form SF 50 which indicates that his retirement coverage was under CSRS offset and FICA during his federal service. As such, the Board finds that the August 9, 2024 overpayment determination must be reversed.<sup>7</sup> Accordingly,

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<sup>6</sup> *Id.* at § 8401 *et seq.*

<sup>7</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). See also *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).

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

Issued: February 24, 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