

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

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<b>J.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0218</b>
	)	<b>Issued: July 9, 2025</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE SUPPLY AGENCY, DEFENSE DEPOT, Tracy, CA, Employer</b>	)	
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*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 30, 2023, appellant filed a timely appeal from a September 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0218.

This case has been previously before the Board.<sup>1</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

By decision dated July 15, 2019, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$8,678.89, during the period September 1, 2016 through March 30, 2019, for which she was without fault, because she concurrently received Federal Employees' Compensation Act<sup>2</sup> (FECA) wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset.

On August 19, 2019, appellant appealed OWCP's July 15, 2019 final overpayment determination to the Board. By order dated July 29, 2020, the Board reversed OWCP's July 15,

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<sup>1</sup> *Order Reversing Case*, Docket No. 19-1806 (issued July 29, 2020).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

2019 final overpayment determination, finding that the evidence of record failed to establish that appellant was enrolled in the Federal Employees Retirement System (FERS).

On August 19 and October 25, 2022, OWCP requested an updated FERS/SSA dual benefits form from SSA.

On November 16, 2022, SSA completed the dual benefits form and advised that appellant had concurrently received benefits subject to an offset from September 2016 through December 2021. SSA's representative remarked, "Our policy is to provide rates with any federal earnings included and rates without federal earnings included. We do not distinguish if a benefit is FERS or CSRS."

In a letter dated February 13, 2023, the employing establishment again challenged the legal basis underlying OWCP's September 8, 2020 letter.

On June 14, 2023, OWCP requested an updated FERS/SSA dual benefits calculation from SSA. In an updated dual benefits form dated July 21, 2023, SSA reported appellant's SSA age-related retirement benefit rates with and without federal service beginning July 2016.

On August 9, 2023, OWCP issued a preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$24,615.75 for the period September 1, 2016 through July 15, 2023 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It provided its overpayment calculations and found that appellant was without fault in the creation of the overpayment. OWCP noted that appellant's retirement plan was listed as under the Federal Insurance Contributions Act (FICA).

By decision dated September 18, 2023, OWCP finalized the August 9, 2023 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$24,615.75 for the period September 1, 2016 through July 15, 2023, because it had failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required recovery of the repayment by withholding \$541.09 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.

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>3</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

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<sup>3</sup> 5 U.S.C. at § 8401 *et seq.*

an overpayment of compensation following a claimant's receipt of SSA age-related retirement benefits, the Board has observed that OWCP uses a dual benefits form. This dual benefits form is sent to SSA, and the completed form is returned to OWCP setting forth purported SSA age-related retirement benefit rates with and without federal service. 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 entitled to be enrolled in a federal retirement program. Here, the evidence of record does not establish that appellant was covered under FERS. As such, the Board finds that the September 18, 2023 decision must be reversed.<sup>4</sup> Accordingly,

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

Issued: July 9, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>4</sup> Compare *Order Reversing Case, J.D.*, Docket No. 25-0170 (issued February 24, 2025); *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).