

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

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| L.G., Appellant |) | |
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| |) | |
| and |) | Docket No. 25-0393 |
| |) | Issued: June 26, 2025 |
| U.S. POSTAL SERVICE, TWIN LAKES POST OFFICE, Twin Lakes, WI, Employer |) | |
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 14, 2025 appellant, through counsel, filed a timely appeal from a February 25, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0393.

This case has previously been before the Board on a different issue.² 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.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Docket No. 21-0950 (issued June 6, 2022). The Board found that OWCP had established that appellant had received an overpayment of compensation during the period April 1, 2018 through September 25, 2020 as she had continued to receive wage-loss compensation while a third-party surplus was outstanding. However, the case was not in posture for decision with regard to the amount of overpayment and remanded the case to OWCP for further proceedings.

On June 6, 2002, appellant, then a 47-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2002 she sustained nine puncture wounds on her legs from a dog attack while in the performance of duty. OWCP accepted the claim for bilateral open wounds of the ankles, knees, and legs, and a lumbar sprain and paid appellant intermittent wage-loss compensation on the supplemental rolls from February 2, 2003 through October 12, 2007 under OWCP File No. xxxxxx657. It also paid her wage-loss compensation on the supplemental rolls as of April 1, 2018, and on the periodic rolls as of January 3, 2021. On March 16, 2022 OWCP terminated wage-loss compensation, finding that appellant should have been paid under the master file, OWCP File No. xxxxxx472.³

August 4, 2018 and May 18, 2002 notification of personnel action (PS Form 50) forms indicated that appellant's retirement plan was Federal Insurance Contributions Act (FICA).

On May 13, 2021 the Social Security Administration (SSA) completed a Federal Employees Retirement System (FERS)/SSA dual benefits form, reporting appellant's SSA age-related retirement benefits rates with and without FERS from April 2018 through January 2021.

Following further development, on October 21, 2022 and January 31, 2023, OWCP requested that SSA provide additional information regarding appellant's FECA offset based on her federal earnings paid on the basis of age and attributable to her federal service, noting that the August 4, 2018 PS 50 form indicated that appellant was enrolled in the FICA system.

On January 31 and July 18, 2023, SSA completed a dual benefits form, which reported appellant's SSA age-related retirement benefits with and without federal service from April 2018 through December 2022.

On April 23, 2024, OWCP requested that SSA provide additional information as to why prior transmittals showed different amounts for the SSA rate without offset due to federal service for the effective dates January 1, 2020, December 1, 2020, and January 1, 2021. It also noted that the rates began prior to appellant's full retirement age and verification was needed of the effective date she elected SSA retirement benefits.

On May 31, 2024, SSA recalculated the dual benefits form which reported appellant's SSA age-related retirement benefits with and without federal service from April 2018 through December 2022 and reported rates without and without federal service beginning December 2023. SSA also clarified the reasons why the rates previously provided were incorrect and why the new rates provided on May 31, 2024 were correct.

OWCP completed a compensation adjustment worksheet for FERS offset on July 25, 2024 and determined that appellant had received an overpayment of compensation for the period September 26, 2020 through April 24, 2021 in the amount of \$3,355.38.

³ Under OWCP File No. xxxxxx472, OWCP accepted a March 21, 2014 employment injury for right radial head fracture, right lunate fracture, left knee contusion, rib contusion, and left shoulder strain. It has administratively combined this file, OWCP File No. xxxxxx657, with OWCP File No. xxxxxx472, the latter of which is serving as the master file.

On August 9, 2024 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$3,355.38 had been created for the period September 26, 2020 through April 24, 2021, because appellant concurrently received wage-loss compensation payments under the Federal Employees' Compensation Act⁴ (FECA) and SSA age-related retirement benefits, without an appropriate offset. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable repayment method and advised that she could request waiver of recovery of the overpayment. Additionally, it provided an overpayment action request form and 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 August 27, 2024 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review, disagreeing with the fact and amount of the overpayment. She also requested waiver of recovery of the overpayment. OWCP subsequently submitted a completed Form OWCP-20 dated September 3, 2024, wherein appellant listing her total monthly income, total monthly expenses, and assets.

A hearing was held on December 12, 2024.

By decision dated February 25, 2025, OWCP's hearing representative finalized the preliminary overpayment determination, finding that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,355.38, for the period September 26, 2020 through April 24, 2021 because appellant concurrently received wage-loss compensation payments under FECA and SSA age-related retirement benefits, without an appropriate offset. The hearing representative further determined that appellant was without fault in the creation of the overpayment but denied waiver of recovery. The hearing representative required recovery of the overpayment in full.

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.⁵

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 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

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 5 U.S.C. § 8401 *et seq.*

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. Rather, the evidence establishes that she was covered under FICA during her federal service. As such, the Board finds that the February 25, 2025 decision must be reversed.⁶ Accordingly,

IT IS HEREBY ORDERED THAT the February 25, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 26, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁶ 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).