

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

F.S., Appellant)
and) Docket No. 25-0518
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
SAN DIEGO VA HEALTHCARE SYSTEM,)
San Diego, CA, Employer)
Issued: June 25, 2025

)

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 April 30, 2025, appellant filed a timely appeal from an April 10, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0518.

On January 4, 2008, appellant, then a 54-year-old medical support assistant, filed an occupational disease claim (Form CA-2) alleging that he developed a left shoulder condition due to factors of his federal employment, including repetitive use of a computer and performance of

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). In support of appellant's oral argument request, he asserted that oral argument should be granted because he did not receive any notification of his hearing and his claim had been erroneously denied. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

various administrative and clerical duties 40 hours per week.² OWCP accepted the claim for sprain of left rotator cuff capsule, adhesive capsulitis of left shoulder; bicipital tendinitis, left shoulder; superior glenoid labrum lesion of left shoulder; sprain of left acromioclavicular joint, lesion of ulnar nerve, left upper limb; and lateral epicondylitis, left elbow. It paid appellant wage-loss compensation on the supplemental rolls, effective April 28, 2008, and on the periodic rolls, effective February 13, 2011.

A January 21, 2011 notification of personnel action (Standard Form (SF) 50) indicated that appellant's service computation date was October 31, 1979 and his retirement coverage was under the Federal Insurance Contributions Act (FICA) and the Civil Service Retirement System (CSRS) (partial).

On June 24, 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.

OWCP received a completed FERS/SSA dual benefits form from SSA dated July 23, 2022. The form reported appellant's SSA age-related retirement benefit rates with and without FERS from August 2019 through December 2021.

On August 26, 2024, OWCP provided SSA with another dual benefits form and noted that its prior request was for SSA rates with and without FERS, however, the updated request is for rates with and without federal service and the response should not reference FERS. No response was received.

In an October 24, 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 advised him that his new net wage-loss compensation payments would be \$2,888.52.

A December 13, 2024 SSA offset overpayment calculation for the period August 1, 2019 through August 13, 2022 indicated an overpayment amount of \$12,752.80.

In a preliminary overpayment determination dated January 17, 2025, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$12,752.80 for the period August 1, 2019 through August 13, 2022, 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 recovery method and advised that he could request waiver of recovery of the

² OWCP assigned the current claim, OWCP File No. xxxxxxx698. Appellant also has accepted claims under OWCP File No. xxxxxxx439, which was for left carpal tunnel syndrome (CTS) and left trigger finger, and other tenosynovitis of left hand and wrist and subsidiary; OWCP File No. xxxxxxx142 for a right CTS condition and OWCP File No. xxxxxxx760, for a right elbow strain, right shoulder impingement, and right elbow lateral epicondylitis. OWCP administratively combined OWCP File Nos. xxxxxxx439, xxxxxxx760, and xxxxxxx698, with the latter serving as the master file. (10/26/16 SOAF).

overpayment. Additionally, OWCP notified him that he could request a final decision based on the written evidence or a prerecoupment hearing within 30 days.

In a February 5, 2025 letter, appellant indicated that he did not understand why his SSA benefits were offset as his retirement coverage is under FICA and such an offset would cause financial hardship. He thereafter continued to inform OWCP that he is covered under CSRS, not FERS.

By decision dated April 10, 2025, OWCP noted that a SF 50 with an effective date of January 21, 2011, documented appellant's retirement system as "FICA & CS (PARTIAL)," and that this was a retirement system that was subject to offset. It finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$12,752.80 for the period August 1, 2019 through August 13, 2022. OWCP 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. It required recovery of the overpayment by deducting \$355.00 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.³

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.⁴ 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 calculations as to the effective date and rate of SSA benefits with and without federal service. Following receipt of the purported SSA age-related retirement benefit rates, 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

³ 5 U.S.C. § 8401 *et seq.*

⁴ FECA Bulletin No. 97-09 (issued February 3, 1997).

that his retirement coverage was under CSRS and FICA during his federal service. As such, the Board finds that the April 10, 2025 overpayment determination must be reversed.⁵ Accordingly,

IT IS HEREBY ORDERED THAT the April 10, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 25, 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

⁵ See *Order Reversing Case, L.W.*, Docket No. 24-0639 (issued April 1, 2025); *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).