

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

J.T., Appellant)	
)	
and)	Docket No. 21-0119
)	Issued: April 9, 2021
U.S. POSTAL SERVICE, OPP POST OFFICE,)	
Opp, AL, Employer)	
)	

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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 4, 2020 appellant, through counsel, filed a timely appeal from a September 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 21-0119.

The issues on appeal before the Board relate to OWCP's September 23, 2020 finding that appellant received an overpayment of compensation in the amount of \$12,749.52 for the period February 1, 2017 through August 15, 2020, for which she was without fault, due to her alleged concurrent receipt of Federal Employees' Compensation Act³ (FECA) wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate

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 The record also contains a June 10, 2020 forfeiture decision, which appellant appealed to the Board on August 28, 2020. The appeal of the forfeiture decision will proceed under Docket No. 20-1563.

³ 5 U.S.C. § 8101 *et seq.*

offset attributable to the Federal Employees Retirement System (FERS). OWCP also denied waiver of recovery of the overpayment and required repayment of \$200.00 every 28 days from appellant's continuing compensation payments.

The Board finds that OWCP failed to properly develop the underlying issue of what portion of appellant's SSA age-related retirement benefits were attributable to her federal employment.⁴

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by FERS/FECA offset amount. Since SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.⁵ The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to 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 receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷ 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 Offset Calculation Worksheet.⁸ This calculation worksheet 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.⁹ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.¹⁰

The Board has observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as the Civil Service Retirement System (CSRS).¹¹ Other federal employees are not eligible for enrollment 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.

⁴ *J.L.*, Docket No. 19-1806 (issued July 29, 2020).

⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management -- *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h) (September 2020).

⁶ *See* 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁷ FECA Bulletin No. 97-09 (February 3, 1997).

⁸ *Supra* note 4.

⁹ *Supra* note 7.

¹⁰ *Id.*

¹¹ *Supra* note 4.

The information solicited on the FERS Offset Calculation Worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

In the present case, the evidence of record establishes that appellant was not enrolled in FERS. On the reverse side of her traumatic injury claim (Form CA-1) the employing establishment reported her retirement coverage only as Federal Insurance Contributions Act (FICA). Similarly, claims for compensation (Form CA-7) dated October 17 and November 3, 2016 provide that appellant was not covered under a retirement system, but had FICA coverage.

As OWCP has not demonstrated that appellant received SSA age-related retirement benefits, based on her federal service, concurrently with FECA disability compensation from OWCP, without proper offset, it has not established that she received an overpayment of compensation.¹² Therefore, the Board finds that the September 23, 2020 decision must be reversed.

IT IS HEREBY ORDERED THAT the September 23, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 9, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹² See *Order Reversing Case, L.A.*, Docket No. 20-0949 (issued December 2, 2020).