

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

A.L., widow of G.L., Appellant)	
)	
and)	Docket No. 22-0747
)	Issued: December 9, 2022
DEPARTMENT OF THE AIR FORCE,)	
MALMSTROM AIR FORCE BASE, MT,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On April 4, 2022 appellant filed a timely appeal from a March 3, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0747.

On February 20, 1991 the employee, then a 42-year-old airfield equipment clearing operator, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury after working on trucks and moving steel while in the performance of duty. OWCP accepted the claim for L4-5 left disc bulge. It paid him wage-loss compensation on the periodic rolls effective June 16, 2002.

On July 12, 2007 the employee filed a notice of recurrence (Form CA-2a) claiming a recurrence of total disability, commencing April 20, 2007, due to sitting, walking, standing, pushing, and pulling while in the performance of duty for a nonfederal employer causally related to his February 20, 1991 employment injury. He stopped work on that date.

By decision dated August 14, 2007, OWCP accepted the claimed recurrence of disability. It paid appellant compensation on the supplemental rolls commencing April 25, 2007 and on the periodic rolls effective May 13, 2007.

On April 8, 2021 OWCP provided the Social Security Administration (SSA) with a Federal Employees Retirement System (FERS)/SSA dual benefits form. It listed the computation period as February 20, 1991 to the present. OWCP again submitted the form to SSA on June 23 and July 30, 2021.

On September 3, 2021 SSA provided OWCP with a completed dual benefits form, which listed the employee's monthly SSA age-related retirement benefit rates, beginning September 2014, with and without the employee's FERS contributions. The FERS/SSA dual benefits form indicated that: beginning September 2014, the SSA rate with FERS was \$1,356.20 and without FERS was \$1,155.90; beginning December 2014, the SSA rate with FERS was \$1,379.20 and without FERS was \$1,175.50; beginning December 2015, the SSA rate with FERS was \$1,379.20 and without FERS was \$1,175.50; beginning December 2016, the SSA rate with FERS was \$1,383.30 and without FERS was \$1,179.00; beginning December 2017, the SSA rate with FERS \$1,410.90 and without FERS was \$1,202.50; beginning December 2018, the SSA rate with FERS was \$1,450.40 and without FERS was \$1,236.10; beginning December 2019, the SSA rate with FERS was \$1,473.60 and without FERS was \$1,255.80; and beginning December 2020, the SSA rate with FERS was \$1,492.70 and without FERS was \$1,272.10.

On September 20, 2021 SSA notified OWCP that the employee had passed away on September 16, 2021. In a memorandum of telephone call (Form CA-110) dated September 21, 2021, appellant informed OWCP that the employee, her husband, had passed away on September 16, 2021.

In a letter dated September 21, 2021 addressed to the employee's estate, OWCP requested the return of all uncashed compensation checks, and the completion of a questionnaire so that it could determine to whom any remaining compensation should be paid. On September 24, 2021 appellant returned the completed questionnaire, noting that the employee had died intestate and listing herself as the only relative who may be entitled to share in the distribution of his estate. OWCP subsequently received a death certificate, indicating that the employee had died on September 16, 2021 and listing her as his spouse.

OWCP completed a FERS offset overpayment calculation worksheet on December 28, 2021. It calculated the overpayment amount by determining the daily FERS offset amount and multiplying that amount by the number of days in each period between September 1, 2014 through September 15, 2021, resulting in a total overpayment of \$17,784.24. The form indicated that: for the period September 1 through November 30, 2014, the employee received an overpayment in the amount of \$600.90; for the period December 1, 2014 through November 30, 2015, the employee received an overpayment in the amount of \$2,451.12; for the period December 1, 2015 through November 30, 2016, the employee received an overpayment in the amount of \$2,457.83; for the period December 1, 2016 through November 30, 2017, the employee received an overpayment in the amount of \$2,458.34; for the period December 1, 2017 through November 30, 2018, the employee received an overpayment in the amount of \$2,507.67; for the period December 1, 2018 through November 30, 2019, the employee received an overpayment in the amount of \$2,578.66; for the period December 1, 2019 through November 30, 2020, the employee received an overpayment in the amount of \$2,627.96; and for the period December 1, 2020 through September 15, 2021, the employee received an overpayment in the amount of \$2,101.76.

By notice dated December 28, 2021, OWCP issued a preliminary overpayment determination, addressed to the employee's estate, finding that the employee received an overpayment of compensation in the amount of \$17,784.24 for the period September 1, 2014 through September 15, 2021 because it had failed to reduce the employee's wage-loss compensation benefits by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further advised appellant of its preliminary determination that the employee was without fault in the creation of the overpayment. OWCP requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request waiver of recovery of the overpayment. It further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP further provided an overpayment action request form and notified her 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 January 27, 2022 OWCP received appellant's overpayment action form. Appellant requested that OWCP make a decision based on the written evidence. She also submitted a completed Form OWCP-20 signed on January 5, 2022. Appellant reported total monthly income, monthly expenses, and other assets. She did not submit any supporting financial documentation.

By decision dated March 3, 2022, addressed to the employee's estate, OWCP finalized the preliminary overpayment determination finding that the employee received an overpayment of compensation in the amount of \$17,784.24 for the period September 1, 2014 through September 15, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that the employee was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment in full.

The Board finds that OWCP did not meet its burden of proof to establish that the employee received an overpayment of compensation.

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/FECA offset amount. Since the 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.¹ 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.² 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

¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h) (September 2020).

² See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

benefit.³ In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of age-related SSA age-related retirement benefits, the Board has observed that OWCP uses a FERS offset overpayment calculation worksheet.⁴ The form sets forth the SSA-reported information as to the effective date and rates of SSA age-related retirement benefits with and without FERS. Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁵

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). Other federal employees are not entitled 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. Therefore, the information solicited on the FERS offset overpayment 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.

Herein, the evidence of record does not establish that the employee was covered under FERS. Rather, the record establishes that the employee was a temporary employee who was not under a federal retirement program. In an undated memorandum filed on August 13, 2007, J.K., Department of Defense liaison of the Defense Civilian Personnel Management Service, confirmed that the employee was hired by the employing establishment as a temporary employee. The record before the Board also contains several Notification of Personnel Action Forms, Standard Form 50, indicating that appellant was covered only under the Federal Insurance Contributions Act (FICA), not FERS.

OWCP has not provided evidence to establish that the employee was enrolled in FERS. The Board thus finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$17,784.24 for the period September 1, 2014 through September 15, 2021. Accordingly,

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

⁴ *Id.*

⁵ *Supra* note 2.

IT IS HEREBY ORDERED THAT the March 3, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 9, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board