

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

A.A., Appellant	)	
	)	
and	)	<b>Docket No. 21-1181</b>
	)	<b>Issued: May 13, 2022</b>
DEPARTMENT OF THE AIR FORCE, AIR	)	
EDUCATION & TRAINING COMMAND,	)	
KEESLER AIR FORCE BASE, Biloxi, MS,	)	
Employer	)	
	)	

*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 July 29, 2021 appellant filed a timely appeal from an April 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 21-1181.<sup>2</sup>

On March 15, 1989 appellant, then a 49-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on March 8, 1989 she sustained a muscle strain in her lower back when pulling a food cart off an elevator, while in the performance of duty. She stopped

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<sup>1</sup> The Board notes that, following the April 26, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>2</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). 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). In light of the Board's disposition of this case, the request for oral argument is denied.

work on March 15, 1989. OWCP accepted the claim for lumbosacral strain and aggravation of preexisting degenerative disc disease.

By letter dated October 28, 1993, the Office of Personnel Management (OPM) provided information to OWCP concerning appellant's federal employment history. OPM noted that she was employed by the employing establishment from September 1976 to May 1980. In June 1980, appellant accepted a temporary appointment, which was converted to reinstated career conditional status effective May 1981.

The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls, effective June 16, 2002.

On February 4, 2021 OWCP forwarded a Federal Employees Retirement System (FERS)/ Social Security Administration (SSA) dual benefits form to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits. It listed the computation period as March 8, 1989 to the present.

On March 17, 2021 OWCP received the completed FERS/SSA dual benefits form, wherein SSA noted that appellant had received disability benefits through May 2002, and age-related retirement benefits as of June 2002. SSA reported her SSA age-related retirement benefit rates with and without a FERS offset from June 2002 through December 2020.

In a FERS offset overpayment calculation worksheet dated March 25, 2021, OWCP used the information provided by SSA to calculate the 28-day FERS offset for the relevant periods and calculated a total overpayment in the amount of \$28,484.11.

On March 25, 2021 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$28,484.11 for the period June 1, 2002 through February 27, 2021 because the SSA/FERS offset was not applied to payments for this period. It included the 28-day FERS offset calculations from June 1, 2002 to February 27, 2021 for her review. OWCP determined that appellant was without fault in the creation of the overpayment. It 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. OWCP requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. OWCP provided an overpayment action request form and further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoumpment hearing.

In an April 9, 2021 overpayment action request form, appellant requested that OWCP issue a decision based on the written evidence. She requested a waiver as she was found to be without fault in the creation of the overpayment. On a completed Form OWCP-20 dated April 9, 2021, appellant reported monthly income of \$2,069.11. She also listed her usual expenses totaling \$1,433.00 and debts paid by monthly installments totaling \$228.00. Appellant indicated that she

had \$5.00 cash on hand, no money in checking or savings accounts, and no assets. No supporting financial documentation was received.

By decision dated April 26, 2021, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$28,484.11 because the FERS/SSA offset had not been applied to payments for the period June 1, 2002 through February 27, 2021. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery, because she had not provided supporting documents to the Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, or any other records to support the income and expenses listed on the Form OWCP-20. OWCP required recovery of the overpayment by deducting \$350.87 every 28 days from appellant's continuing compensation payments.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of what portion, if any, of appellant's SSA age-related retirement benefits were attributable to federal service.<sup>3</sup>

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/SSA 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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/SSA dual benefits form.<sup>7</sup> This 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 FERS.<sup>8</sup> Following receipt of the completed form from SSA, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>9</sup>

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<sup>3</sup> See *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); *J.L.*, Docket No. 19-1806 (issued July 29, 2020); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1 (h), (September 2018).

<sup>5</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *J.L.*, *supra* note 3.

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. 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. Thus, the information solicited on the FERS/SSA dual benefits form 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 appellant was enrolled in FERS. The case record contains an October 28, 1993 letter from OPM indicating that she was employed by the employing establishment from September 1976 to May 1980. In June 1980, appellant accepted a temporary appointment, which was converted to reinstated career conditional status, effective May 1981, prior to the effective date of FERS.<sup>10</sup> OWCP has not provided evidence to establish that she was enrolled in FERS or that she subsequently elected FERS coverage.<sup>11</sup> The Board, thus, finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$28,484.11 for the period June 1, 2002 through February 27, 2021. Accordingly,

**IT IS HEREBY ORDERED THAT** the April 26, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 13, 2022  
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>10</sup> See generally 5 U.S.C. § 8401 *et seq.*; 5 C.F.R. Part 846.

<sup>11</sup> *Id.*