

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

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| M.A., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0606 |
| |) | Issued: August 29, 2023 |
| DEPARTMENT OF AGRICULTURE, FOREST |) | |
| SERVICE, SISKIYOU NATIONAL FOREST, |) | |
| Grants Pass, OR, Employer |) | |
| |) | |

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On March 21, 2023 appellant filed a timely appeal from an October 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0606.¹

On August 18, 1980 appellant, then a 24-year-old smoke jumper, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 1980 he sustained front incisor tooth, bilateral foot, and lumbar injuries, he fell approximately 60 to 70 feet from a tree to the ground when his parachute, which got caught in the branches of a tree canopy, broke away from the branches and he forcefully landed on his feet while in the performance of duty. OWCP accepted the claim for compression fractures at L2 and T12, lumbar subluxation, a comminuted fracture right os calcis, left heel contusion, left atrophic heel pad, left medial meniscus tear, fractured teeth # 22, 23 and 24, and chronic pain syndrome. It subsequently expanded the claim to include left striae atrophicae, cervical spondylosis without myelopathy, lumbar spinal stenosis without myelopathy, and permanent aggravation of lumbar degenerative disc disease at L5-S1. OWCP paid appellant

¹ The Board notes that following the October 11, 2022 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.*

wage-loss compensation on the supplemental rolls from September 7, 2013 and on the periodic compensation rolls effective September 22, 2013.

A July 29, 2002 Notification of Personnel Action Form, Standard Form 50, notes appellant's retirement system as Code C, Federal Insurance Contributions Act (FICA) and Civil Service, with a service compensation date of March 20, 1976.

On July 28, 2022 OWCP forwarded a Federal Employees Retirement System (FERS)/Social Security Administration (SSA) dual benefits calculation form to SSA to obtain information regarding appellant's receipt of SSA age-related retirement benefits.

In an overpayment referral memorandum, OWCP indicated an overpayment had occurred during the period February 1 through July 16, 2022 due to appellant's status as a CSRS Offset (Interim). In a FERS offset calculation worksheet, it noted his SSA age-related retirement benefit rates with and without a FERS offset from February 1 to July 16, 2022 and found a total overpayment of \$13,597.06.

On September 9, 2022 OWCP issued a preliminary overpayment determination that appellant was overpaid compensation in the amount of \$13,597.06, for the period February 1 through July 16, 2022, because he received SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised him that he could request waiver of recovery of the overpayment. Additionally, it further notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence, or a precouplement hearing. No additional evidence was received.

By decision dated October 11, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$13,597.06 for the period February 1 through July 16, 2022, because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$1,101.90 from appellant's continuing compensation payments, every 28 days, beginning November 5, 2022.

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.²

² See *Order Reversing Case, M.E.*, Docket No. 21-0624 (issued February 15, 2023); *Order Reversing Case, A.A.*, Docket No. 21-1181 (issued May 13, 2022); *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); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by an appropriate offset. Since the SSA will not report an offset amount until after the 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.³ 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.⁴ 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.⁵ 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.⁶ 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.⁷ Following receipt of the completed form from SSA, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁸

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. 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 a Notification of Personnel Action Form, Standard Form 50, dated July 29, 2002, in which his retirement system is listed as Code C, FICA and CSRS (offset). OWCP has not provided evidence to establish that appellant was enrolled in FERS or that he subsequently elected FERS coverage. The Board thus finds that OWCP improperly determined that he received an overpayment of compensation in the amount of \$13,597.06 for the period February 1 through July 16, 2022. Accordingly,

³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1h (September 2020).

⁴ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁶ *Id.*

⁷ *Id.*

⁸ *Supra* note 5.

IT IS HEREBY ORDERED THAT the October 11, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 29, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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