

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

E.P., Appellant)	
)	
and)	Docket No. 24-0528
)	Issued: August 13, 2024
DEPARTMENT OF THE NAVY, TRIDENT)	
REFIT FACILITY, Kings Bay, GA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On April 22, 2024 appellant filed a timely appeal from a March 4, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0528.

The issues on appeal before the Board relate to OWCP's finding of an overpayment of compensation benefits due to appellant's alleged concurrent receipt of Federal Employees' Compensation Act¹ (FECA) wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset.

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 federal employment.

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 SSA benefits are received, an overpayment will almost always occur and will need to be calculated for

¹ 5 U.S.C. § 8101 *et seq.*

each period in which the offset amount was not withheld from compensation.² 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.³ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the Federal Employees Retirement System (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.⁴ In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of age-related SSA retirement benefits, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.⁵ 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.⁶ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁷

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 Civil Service Retirement System (CSRS) or CSRS Interim/Offset.⁸ 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.⁹ 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 fact or amount of an overpayment.

Herein, the evidence of record establishes that appellant was not enrolled in FERS. An October 5, 2016 notification of personnel action, Standard Form (SF)-50, indicated that appellant's retirement plan was the CSRS partial and the Federal Insurance Contributions Act (FICA). By decision dated February 21, 2019, OWCP's hearing representative found that the SF-50 indicated that appellant was covered under FICA and CSRS partial, and instructed OWCP to verify his retirement plan with the Office of Personnel Management (OPM). On March 11, 2019 OPM advised that he was under the CSRS offset retirement plan. OWCP subsequently sent dual benefits

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1h (September 2020).

³ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

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

⁵ *Id.*

⁶ *Id.*

⁷ *Supra* note 4.

⁸ CSRS Interim/Offset was a precursor to FERS that required contributions to both CSRS and Social Security's Old-Age, Survivors, and Disability Insurance (OASDI). It generally applied to certain new hires or former CSRS-covered employees who had been separated from service for at least one year and rehired after December 31, 1983.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.9c (May 2012).

calculation forms to SSA for completion. It did not, however, specifically inform SSA on these forms that appellant was covered under the CSRS offset retirement plan. Instead, the August 19, 2022 form asked for the offset applicable under FERS and the August 15, 2023 form generally requested rates with and without federal earnings. OWCP failed to specifically advise SSA of appellant's retirement coverage. The Board thus finds that it has not established that he received SSA age-related benefits due in part to his federal service and FECA disability compensation without a proper offset. Consequently, OWCP has not established that appellant received an overpayment of compensation in the amount of \$45,363.88 for the period March 4, 2017 through August 12, 2023. The Board therefore finds that the March 4, 2024 decision must be reversed.¹⁰ Accordingly,

IT IS HEREBY ORDERED THAT the March 4, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 13, 2024
Washington, DC

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

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

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

¹⁰ See *M.I.*, Docket No. 24-0070 (issued March 5, 2024); *Order Reversing Case, M.E.*, Docket No. 21-0624 (issued February 15, 2023); *Order Reversing Case, L.K.*, Docket No. 20-0091 (issued December 3, 2020).