



On June 29, 2021 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits form, requesting information concerning a potential overpayment.

On a July 20, 2021 completed a FERS/SSA dual benefits form, SSA reported appellant's SSA age-related retirement benefit rates with and without FERS as of May 1, 2017. Beginning May 1, 2017, the SSA rate with FERS was \$904.60 and without FERS was \$244.00; beginning December 1, 2017, the SSA rate with FERS was \$922.60 and without FERS was \$248.80; beginning December 1, 2018, the SSA rate with FERS was \$948.40 and without FERS was \$255.70; beginning December 1, 2019, the SSA rate with FERS was \$963.50 and without FERS was \$259.70; beginning December 1, 2020, the SSA rate with FERS was \$976.00 and without FERS was \$263.00.

OWCP completed a FERS offset overpayment calculation worksheet on July 20, 2021, indicating that appellant had received an overpayment of compensation for the period May 1, 2017 through July 17, 2021 in the amount of \$34,978.31.

On July 23, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$34,978,31 had been created for the period May 1, 2017 through July 17, 2021, because appellant concurrently received wage-loss compensation under the Federal Employees' Compensation Act<sup>3</sup> (FECA) and SSA age-related retirement benefits without an appropriate offset. It determined that she 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 repayment method and advised that she could request waiver of the overpayment. Additionally, it provided an overpayment action request form and notified appellant 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 August 5, 2021 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She subsequently submitted a Form OWCP-20, a statement that listed her monthly income and expenses, and supporting financial documentation.

A prerecoupment hearing was held on November 17, 2021.

By decision dated January 4, 2022, OWCP's hearing representative vacated the July 23, 2021 preliminary overpayment determination, and remanded the case for OWCP to determine appellant's retirement system.

On January 12, 2023 OWCP requested that the Office of Personnel Management (OPM) verify appellant's retirement system. In letters dated May 1, 2023, it requested that OPM and the employing establishment provide confirmation of her retirement coverage.

By letter dated June 2, 2023, the employing establishment informed OWCP that appellant's last retirement system on file was CSRS Offset.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

On August 30, 2023 OWCP requested that SSA provide additional information regarding appellant's SSA rates with and without "federal service." It modified its FERS/SSA dual benefits form to a federal service/SSA dual benefits form and submitted it to SSA for completion.

On September 14, 2023 OPM confirmed that appellant was covered under the Civil Service Retirement System (CSRS) retirement system from June 22, 1970 through September 24, 1971; FICA from March 6, 1983 through September 17, 1983; CSRS from September 18, 1983 through June 21, 1989; and CSRS offset from April 15, 1991 through August 2, 1991. OPM confirmed that she paid into Social Security during the Federal Insurance Contributions Act (FICA) coverage period, and during the CSRS offset period.

On December 20, 2023 SSA completed another dual benefits form which reported appellant's SSA age-related retirement benefit rates with and without "federal service" as follows: beginning May 1, 2017, the SSA rate with federal service was \$904.60 and without federal service was \$244.00; beginning December 1, 2017, the SSA rate with federal service was \$922.60 and without federal service was \$248.80; beginning December 1, 2018, the SSA rate with federal service was \$948.40 and without federal service was \$255.70; beginning December 1, 2019, the rate with federal service was \$983.50 and without federal service was \$259.70; beginning December 1, 2020, the SSA rate with federal service was \$976.00 and without federal service was \$263.00; beginning December 1, 2021, the SSA rate with federal service was \$1,033.50 and without federal service was \$278.50; beginning December 1, 2022, the SSA rate with federal service was \$1,123.40 and without federal service was \$302.70; beginning December 1, 2023, the SSA rate with federal service was \$1,159.30 and without federal service was \$312.30.

On January 25, 2024 OWCP modified its FERS offset overpayment calculation worksheet to a "federal service" offset overpayment calculation worksheet on January 25, 2024, indicating that appellant had received: an overpayment from May 1 through November 30, 2017 in the amount of \$4,660.50; an overpayment from December 1, 2017 through November 30, 2018 in the amount of \$8,107.81; an overpayment from December 1, 2018 through November 30, 2019 in the amount of \$8,335.24; an overpayment from December 1, 2019 through November 30, 2020 in the amount of \$8,492.00; and an overpayment from December 1, 2020 through July 17, 2021 in the amount of \$5,382.76, resulting in a total overpayment amount of \$34,978.31.

On January 25, 2024 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$34,978.31 had been created, because it had failed to reduce appellant's wage-loss compensation payments for the period May 1, 2017 through July 17, 2021, to offset her SSA age-related retirement benefits that were attributable to federal service. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable repayment method and advised that she could request waiver of the overpayment. It further requested that she 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 provided an overpayment action request form and notified appellant that within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precouplement hearing.

On February 6, 2024 appellant requested a precouplement hearing before a representative of OWCP's Branch of Hearings and Review, and submitted a partially-completed Form OWCP-

20 listing her monthly income and expenses. A hearing was held on May 6, 2024, after which appellant submitted an amended Form OWCP-20.

By decision dated July 5, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that OWCP properly determined that appellant received an overpayment in the amount of \$34,978.31, for the period May 1, 2017 through July 17, 2021. The hearing representative further determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery, noting that appellant reported assets exceeding the allowable base, and that she had proposed a voluntary repayment plan. He required recovery of the overpayment by deducting \$1,846.15, from appellant's continuing compensation payments every 28 days.

The Board, having duly considered this matter, finds that OWCP failed to properly develop the underlying issue of whether appellant received an overpayment of compensation as a result of receiving prohibited FERS/SSA dual benefits.

Limitations on the right to receive FECA benefits are found in 5 U.S.C. § 8116. Section 8116(d) provides in pertinent part:

Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits *under subchapter III of chapter 84 of this title* or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that--

(2) in the case of benefits received on account of age or death under Title II of the Social Security Act, compensation payable under this subchapter based on the Federal service of an employee shall be reduced by the amount of any such social security benefits payable *that are attributable to Federal service of that employee covered by chapter 84 of this title*. However, eligibility for or receipt of benefits under chapter 84 of this title, or benefits under Title II of the Social Security Act by virtue of service covered by chapter 84 of this title, does not affect the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title. (Emphasis added.)

As noted above, offset provision of 5 U.S.C. § 8116(d)(2) is specifically limited to the federal service of employees covered by the retirement system in 5 U.S.C. Chapter 84, which concerns FERS.<sup>4</sup>

FECA Bulletin No. 97-09 provides that FECA benefits must 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 concurrent receipt of FECA benefits and federal retirement is a prohibited dual benefit. 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. This calculation worksheet is sent to SSA, and the completed form is returned to OWCP setting forth

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<sup>4</sup> 5 U.S.C. §8401 *et seq.*

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. Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.

The Board has also observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as CSRS or CSRS Offset. 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. Here, the evidence of record does not establish that appellant was covered under FERS. Rather, the evidence establishes that she was covered under CSRS, CSRS Offset, and FICA during her federal service. As such, the Board finds that the July 5, 2024 decision must be reversed.<sup>5</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the July 5, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 1, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> See *Order Reversing Case, A.W.*, Docket No. 23-1115 (issued January 26, 2024) (dual benefit overpayment reversed where appellant's retirement system was listed as CSRS offset); *Order Reversing Case, R.S.*, Docket No. 21-0647 (issued April 14, 2023) (dual benefit overpayment reversed where appellant was covered only under FICA); *Order Reversing Case, M.E.*, Docket No. 21-0624 (issued February 15, 2023) (dual benefit overpayment reversed where appellant's retirement system was listed as FICA and CSRS (partial), and there was no evidence in the record that appellant was enrolled in FERS). See also *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); *Order Reversing Case, J.L.*, Docket No. 19-1806 (issued July 29, 2020); *A.C.*, Docket No. 19-0174 (issued July 9, 2019).