

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

H.L., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
CALVERTON NATIONAL CEMETERY,
Calverton, NY, Employer**

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**Docket No. 21-0918
Issued: December 9, 2021**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On May 17, 2021 appellant filed a timely appeal from a January 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0918.

The issues on appeal before the Board relate to OWCP's January 27, 2021 decision, finding an overpayment of wage-loss compensation in the amount of \$12,497.97 for the period June 1, 2016 through August 15, 2020 for which appellant was without fault due to his 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. OWCP also denied waiver of recovery of the overpayment and required repayment of the overpayment by deducting \$215.00 from his continuing compensation payments every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

The Board finds that OWCP failed to properly develop the underlying issue of whether appellant's SSA age-related retirement benefits were attributable to federal employment.²

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the Federal Employees Retirement System (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.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 concurrent receipt of FECA benefits and federal retirement is a prohibited dual benefit.⁵ In identifying the fact and amount of 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.⁶ 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.⁷ Following receipt of the purported SSA calculations, 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.⁹

² See *P.R.*, Docket No. 20-0851 (issued January 29, 2021); see also *L.A.*, Docket No. 20-0949 (issued December 2, 2020).

³ Federal (FECA) Procedure Manual, Part 6 - Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h) (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); see also *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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

The information solicited on the FERS offset 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.¹⁰

OWCP accepted that on April 22, 1993 appellant, then a 40-year-old cemetery caretaker, sustained cervical spondylosis, cervical disc disorder with radiculopathy, a right acromioclavicular joint sprain, and a right rotator tear moving a headstone while in the performance of duty.¹¹ In a claim for compensation (Form CA-7) dated January 26, 1994, the employing establishment indicated that his total length of federal civilian service was 10 years and 4 months. Appellant, thus, began his federal civilian service prior to January 1, 1987, the effective date of FERS.¹² The record fails to indicate that he converted his retirement coverage from CSRS to FERS.¹³

As noted, an offset is not required if the employee is covered under CSRS rather than FERS. If OWCP cannot determine what retirement system the claimant is under, it should send a letter to both the claimant and Office of Personnel Management (OPM) requesting pertinent information.¹⁴

The Board finds that, in light of appellant's pre-1987 federal employment history, the evidence does not establish that he was covered under FERS or received a prohibited dual benefit.¹⁵ OWCP did not sufficiently investigate whether appellant was covered under either CSRS or CSRS Interim/Offset,¹⁶ or FERS.¹⁷

Given the lack of definitive information regarding appellant's retirement coverage, the case must be remanded to OWCP for further development. On remand OWCP should consult with OPM regarding appellant's retirement coverage. To the extent that appellant's monthly SSA age-related retirement benefits were based in part on his FERS-based federal service, OWCP should also obtain a complete earnings history and benefits payment history from SSA prior to issuing another preliminary and/or final overpayment determination.

¹⁰ See *P.C. (R.C), Order Reversing Case*, Docket No. 20-1546 (issued May 4, 2021).

¹¹ The traumatic injury claim form (Form CA-1) is not contained in the case record.

¹² 5 U.S.C. § 8402(b)(2)(B); see also *A.S.*, Docket No. 17-1459 (issued December 22, 2017).

¹³ See *id.* at § 8402.

¹⁴ *Supra* note 9 at Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.9c (May 2012).

¹⁵ See *A.S.*, *supra* note 12; *G.W.*, Docket No. 09-1211 (issued January 6, 2010).

¹⁶ 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.

¹⁷ The record does not include a Standard Form (SF)-50 (Notification of Personnel Action) indicating whether appellant was covered under CSRS, CSRS Offset, or FERS.

IT IS HEREBY ORDERED THAT the January 27, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 9, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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