

INDEX TO APPENDICES

Federal Appeals for Court for Federal Circuit Opinion Case 23-2318	Attachment A
Merit Systems Protection Board Decision DC-0831-23-0285-I-1.	Attachment B
Letter sent to OPM via Congresswoman Eleanor Holmes Norton	Attachment C
Letter dated July 11, 2022, stating offset removed and annuity recalculated	Attachment D
Letter dated July 11, 2022, stating offset is appropriate and will remain.	Attachment E
Postmark from 2 nd July 11, 2022, letter postmarked September 1, 2022	Attachment F
Denial from Supreme Court of Original Submission	Attachment G

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

ANTHONY BOWDEN, SR.,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2023-2377

Petition for review of the Merit Systems Protection
Board in No. DC-0831-23-0285-I-1.

Decided: July 24, 2024

ANTHONY BOWDEN, SR., Washington, DC, pro se.

LIRIDONA SINANI, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, for respondent. Also represented by BRIAN M.
BOYNTON, LISA LEFANTE DONAHUE, PATRICIA M. MCCAR-
THY.

Before REYNA, TARANTO, and HUGHES, *Circuit Judges*.

Attachment A

PER CURIAM.

Petitioner Anthony Bowden, Sr. appeals a decision by the Merit Systems Protection Board, affirming a final decision of the Office of Personnel Management to reduce Mr. Bowden's annuity when he became eligible to receive social security old-age benefits. Because the Board correctly determined that Mr. Bowden was not eligible for enrollment in the Civil Service Retirement System (CSRS), but was instead properly enrolled in CSRS Offset and his annuity offset was therefore appropriate, we affirm.

I

A

On January 1, 1987, the Federal Employees Retirement System (FERS) Act went into effect, replacing the CSRS. See FERS Act of 1986, Pub. L. No. 99-335, 100 Stat. 514. At that time, CSRS became a closed system, and most new or existing federal employees who were not already covered by CSRS were automatically covered by FERS. However, a small class of federal employees—those who had at least five years of creditable civilian service prior to 1987—were not automatically enrolled in FERS. Instead, employees who had at least five years of creditable service, with at least one of the last two years being CSRS-covered service,¹ could be eligible for CSRS annuity coverage. See 5 U.S.C. § 8333 (“Eligibility for annuity”); see also *Herrera v. United States*, 849 F.2d 1416, 1417 (Fed. Cir. 1988) (“[A]n

¹ “Although most service as an employee of the federal government is creditable service, service that is creditable service is not necessarily covered service.” *Herrera*, 849 F.2d at 1417. For example, although term or temporary appointments are creditable towards years of civil service, they are specifically excluded from CSRS coverage, and therefore creditable but not covered service. See 5 C.F.R. § 831.201 (“Exclusions from retirement coverage”).

BOWDEN v. OPM

3

applicant for a civil service annuity must meet the so-called 'one-out-of-two' [year] requirement [of 5 U.S.C. § 8333(b)] before being eligible for any annuity—one of the last two years of the applicant's federal service must have been covered service or the applicant does not meet the criteria for an annuity."). Conversely, federal employees who had at least five years of creditable civil service, but not the required one-out-of-two years of covered service (e.g., those in term or temporary appointments), were not eligible for CSRS annuity coverage. *Herrera*, 849 F.2d at 1417. Instead, those employees only had the option of enrolling in FERS or CSRS Offset.

Under CSRS Offset, a federal employee receives both a CSRS annuity and old-age benefits from the Social Security Administration (SSA). See 5 C.F.R. § 831.1001. Upon reaching the age of eligibility for social security old-age benefits, the Office of Personnel Management (OPM) is required to reduce or offset the annuitant's CSRS annuity by the amount equal to their eligible monthly SSA benefits. 5 U.S.C. § 8349(a)(1). The record reflects that Mr. Bowden enrolled in CSRS Offset. See SAppx. 6, 47.²

B

Between June 1979 and July 1987, Mr. Bowden held multiple non-consecutive term or temporary civil service appointments. It is undisputed that these appointments were not retirement covered appointments. See SAppx 2. On July 15, 1987, Mr. Bowden received his first retirement-covered career appointment. *Id.* At that time, Mr. Bowden's July 1987 Standard Form (SF)-50 listed his retirement plan as "FERS." SAppx. 47. Although initially placed in FERS, Mr. Bowden requested to be placed in

² Citations to "SAppx." refer to the Supplemental Appendix accompanying Respondent Office of Personnel Management's Informal Brief, ECF No. 14.

CSRS Offset in November 2007.³ See SAppx. 6, 47. Following the correction, Mr. Bowden's SF-50s listed him as covered by CSRS Offset. SAppx. 33-44.

Mr. Bowden retired on August 31, 2015, prior to turning 62. In a letter dated December 26, 2015, OPM informed Mr. Bowden that, as required by law and in accordance with CSRS Offset, his monthly annuity would be reduced when he reached the age of 62 and became eligible for social security old-age benefits. On December 23, 2021, after Mr. Bowden had turned 62, OPM sent another letter informing him that beginning in 2022, his monthly annuity would be reduced by \$1,406.30—the calculated offset amount reflecting the portion of monthly social security benefits he was now eligible for.

Subsequently, Mr. Bowden requested a recalculation of his annuity and the offset amount, which OPM later confirmed was correctly calculated.⁴ On November 25, 2022,

³ The record indicates that although Mr. Bowden requested CSRS Offset coverage in November 2007, he was erroneously placed in FERS through February 28, 2008. SAppx. 2-3. This error was properly corrected pursuant to the Federal Erroneous Retirement Coverage Corrections Act and is not at issue in this appeal. See Pub. L. No. 106-265 tit. 2, 114 Stat. 770 (2000) (codified at 5 U.S.C. § 8331 note). Instead, the issue on appeal is whether Mr. Bowden should have initially been placed in CSRS without the offset.

⁴ The record shows that on July 11, 2022, OPM sent two letters to Mr. Bowden regarding this recalculation request. The first letter erroneously stated that Mr. Bowden's annuity would be recalculated to not include the offset, SAppx. 29, while the second letter correctly stated that the offset was required by law and confirmed OPM's earlier calculation, SAppx. 30. OPM also sent a

Mr. Bowden wrote to OPM, requesting reconsideration of its recalculation decision. In his request for reconsideration, Mr. Bowden stated that he believed he “should not be on CSRS offset . . . [he] should be on CSRS” without the offset. SAppx. 32. OPM issued a final decision on January 20, 2023, affirming its initial recalculation decision after again finding Mr. Bowden’s annuity and offset correctly calculated. OPM’s final decision also explained that all of Mr. Bowden’s service prior to July 15, 1987, consisted of term or temporary appointments that were not retirement covered, and that CSRS was already “a closed system when [he] became [retirement] covered” on July 15, 1987. SAppx. 23. “Consequently, [Mr. Bowden] became subject to CSRS-Offset.” *Id.*

On February 15, 2023, Mr. Bowden filed an appeal with the Merit Systems Protection Board, challenging OPM’s final decision. Once more, Mr. Bowden argued that he should have been placed in CSRS, not CSRS Offset. Mr. Bowden also asserted that he was not properly notified of his CSRS Offset enrollment, and that he did not understand the ramifications of such enrollment. On June 1, 2023, the MSPB issued an initial decision affirming OPM’s final reconsideration decision. *See* SAppx. 1–18. The administrative judge found that “[Mr. Bowden] was not eligible for CSRS” at the time of his enrollment, “and therefore he was not entitled to elect it.” SAppx. 7. The administrative judge also found that “the agency notified [Mr. Bowden] of the retirement system in which he was

letter on October 31, 2022, again confirming that the offset calculation was correct. SAppx. 31. It is unclear why the initial incorrect letter was sent, but in its final recalculation decision, OPM acknowledged the error and affirmed that the offset was nevertheless required by law, noting that the “error does not serve to create rights for which [Mr. Bowden is] not entitled.” SAppx. 24.

placed . . . dating back to February 28, 2008.” SAppx. 7. The MSPB’s initial decision became final on July 6, 2023, after Mr. Bowden did not file a petition for review with the Board.

Mr. Bowden timely appeals the Board’s final decision. We have jurisdiction under 5 U.S.C. § 7703(b)(1) and 28 U.S.C. § 1295(a)(9).

II

Our review of MSPB decisions is limited by statute. We must affirm the Board’s decision unless it is “found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence.” 5 U.S.C. § 7703(c); *Whitmore v. Dep’t of Lab.*, 680 F.3d 1353, 1366 (Fed. Cir. 2012). “Under this standard, we will reverse the MSPB’s decision if it is not supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Haebe v. Dep’t of Just.*, 288 F.3d 1288, 1298 (Fed. Cir. 2002) (citation and internal quotation marks omitted).

III

On appeal, Mr. Bowden challenges the Board’s finding that he was properly enrolled in CSRS Offset. Pet. Br. 19. Mr. Bowden again argues that he should have been enrolled in CSRS without the offset. We disagree. As a matter of law, Mr. Bowden could not have been enrolled in CSRS without the offset.

The record shows that prior to 1987, Mr. Bowden held only term or temporary appointments that were excluded from CSRS coverage. SAppx. 6. When Mr. Bowden received his first retirement-covered career appointment on July 15, 1987, CSRS was already a closed system. *Id.* Therefore, at a minimum, Mr. Bowden could not have enrolled in CSRS without offset unless he had at least five years of creditable

BOWDEN v. OPM

7

service with at least one of the last two years being retirement covered service. *See* 5 U.S.C. § 8333 (“Eligibility for annuity”); *see also* *Herrera*, 849 F.2d at 1417. But Mr. Bowden did not have the one-out-of-two years of required covered service, because none of the service prior to his 1987 appointment was retirement covered service. Thus, as a matter of law, Mr. Bowden was not entitled to CSRS without offset and could not have elected it when he finally became eligible for retirement coverage in July 1987. Instead, Mr. Bowden was only eligible for FERS or CSRS Offset.

Because Mr. Bowden was correctly enrolled in CSRS Offset—as he personally requested in November 2007, SAppx. 47—OPM was required by law to reduce his annuity when he turned 62 and became eligible for social security benefits, *see* 5 U.S.C. § 8349. Mr. Bowden’s SF-50s plainly listed which retirement plan he was enrolled in, *e.g.*, SAppx. 33–47, and multiple letters from OPM explicitly notified Mr. Bowden that his annuity would be reduced when he became eligible for social security benefits, *e.g.*, SAppx. 28, 30–31. Substantial evidence supports the Board’s finding that Mr. Bowden received proper notice that he was enrolled in CSRS Offset as well as details regarding when and how much his annuity would be offset. Therefore, we affirm the Board’s decision.

IV

We have considered Mr. Bowden’s remaining arguments and find them unpersuasive. Because Mr. Bowden was not eligible for CSRS without the offset, and because substantial evidence supports the Board’s findings that he received proper notice, we affirm the Board’s decision.

AFFIRMED

COSTS

No costs.

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

ANTHONY BOWDEN, SR,
Appellant,

DOCKET NUMBER
DC-0831-23-0285-I-1

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: June 1, 2023

Anthony Bowden, Sr., Washington, D.C., pro se.

Kevin Beach, Washington, D.C., for the agency.¹

BEFORE
Melissa Mehring
Administrative Judge

INITIAL DECISION

On February 15, 2023, the appellant filed an appeal with the Board challenging the Office of Personnel Management's decision to reduce his annuity. Appeal File (AF), Tab 1. The Board has jurisdiction over this appeal pursuant to 5 U.S.C. § 8347(d)(1) and 5 C.F.R. § 831.110. I held the appellant's requested hearing on May 22, 2023. AF, Tab 18. For the reasons discussed below, the Office of Personnel Management's reconsideration decision is **AFFIRMED**.

¹ The agency representative in this case failed to participate in this appeal. Indeed the only submissions by the agency during the pendency of this action were a designation and a request for an extension of time to respond to the Board's Acknowledgment Order. Appeal File (AF), Tabs 5, 7. I find the agency's failure to appear for any of the scheduled status conferences or the hearing to be unacceptable.

Attachment B

BACKGROUND

In the instant case, the Office of Personnel Management (OPM or agency) issued a reconsideration letter affirming its decision to reduce the appellant's annuity upon his eligibility for Social Security old age benefits. AF, Tab 2 at 2. The appellant appealed that decision. AF, Tab 1.

During the prehearing conference, the appellant agreed that the following facts were not in dispute:

1. The appellant paid FICA only from April 4, 1982 until July 15, 1987. AF, Tab 3 at 93-142.
2. OPM sent the appellant notice of his opportunity to make a deposit for his FICA only service on December 21, 2015, but he did not. AF, Tab 2 at 4, 6-7. The appellant was notified he could make the deposit all at once or over time. *Id.* at 6-7. The appellant stated he never received the letter from OPM, although the address was accurate. The appellant stated that prior to his retirement he was notified about the ability to make a deposit, but he did not understand why the deposit was so high based on interest. The appellant stated he received the December 21, 2015 OPM letter for the first time with the agency reconsideration decision. AF, Tab 15.
3. The appellant's documentation showed that he was converted to a career appointment on July 15, 1987. AF, Tab 3 at 92. The documentation also showed this was the first time the appellant was in a retirement covered appointment. AF, Tab 3 at 93-142.
4. The appellant was placed in Federal Employees' Retirement System (FERS) and remained designated as a FERS covered employee until February 28, 2008. AF, Tab 2 at 12, Tab 3 at 92-142.
5. In an SF-50 dated February 28, 2008, the agency converted the appellant to CSRS offset written as "CSRS & FICA." AF, Tab 2 at 12. In the remarks section of the SF-50, the agency explained the appellant

was erroneously placed in FERS, but should have been in CSRS offset as the appellant requested on November 30, 2007, and the correction was made pursuant to Federal Erroneous Retirement Coverage Corrections Act (FERCCA). *Id.*

6. All of the appellant's SF-50s that followed showed the appellant covered by CSRS offset. AF, Tab 3 at 3-15. This included the appellant last SF-50 dated August 31, 2015, the date of his retirement. *Id.*
7. By letter dated December 26, 2015, OPM notified the appellant that his annuity would be reduced upon his reaching age 62. AF, Tab 2 at 8. The appellant stated he also never received that notification. AF, Tab 15.
8. When the appellant turned 62, OPM notified him by letter dated December 23, 2021, that it was adjusting his annuity because he was now 62 and eligible for a Social Security annuity. AF, Tab 2 at 13.
9. OPM wrote the appellant twice on July 11, 2022. In one letter OPM informed the appellant that it was recalculating his annuity to **not include** the CSRS Offset. AF, Tab 2 at 19. In the other letter, OPM wrote that it was initially correct and it would offset his annuity to account for his social security benefits. AF, Tab 2 at 20. The appellant stated he did not receive the second July 11, 2022 dated letter until September 2022. AF, Tab 15.
10. OPM sent another letter on October 31, 2022 that provided the same information as the second July 11, 2022 dated letter, and provided him with the opportunity to seek reconsideration, which he did. AF, Tab 2 at 30.
11. OPM issued a reconsideration decision on January 20, 2023 and found the agency correctly calculated the appellant's annuity and the offset was appropriate. AF, Tab 2 at 2.

Following the prehearing conference, the appellant argued that his failure to pay the deposit for his uncovered service was not a basis for denying him CSRS coverage. AF, Tab 16. Rather, OPM informed the appellant the deposit would only result in the adjustment of his annuity. AF, Tab 2 at 6; AF, Tab 16.

The appellant referenced letter dated December 21, 2015 that explained to the appellant that he was entitled to relief under FERCCA. AF, Tab 2 at 6. The appellant correctly noted that by paying the deposit for his non-deduction service he would have received an additional \$117.00. *Id.* The appellant stated he did not make the deposit. AF, Tab 15. Further, the appellant wrote to the Board that he did not understand that he was on CSRS Offset and he was not given proper notice of this fact. AF, Tab 16.

ANALYSIS AND FINDINGS

The appellant must prove by a preponderance of the evidence that he is entitled to the benefit he seeks, in this case, an unreduced annuity. 5 C.F.R. § 1201.56(b)(2)(ii); *Cheeseman v. Office of Personnel Management*, 791 F.2d 138, 140-41 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1037 (1987). A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

FERCCA does not require a change of the appellant's retirement system

The following is a summary of the law applicable to a FERCCA appeal. The Board has jurisdiction over such an appeal pursuant to 5 C.F.R. § 839.1302. An individual "can appeal to the MSPB a decision that affects [his] rights and interests under this part," i.e., 5 C.F.R. Part 839, Correction of Retirement Coverage Errors under FERCCA, except with regard to certain OPM discretionary actions regarding out-of-pocket losses. FERCCA was enacted

September 19, 2000. See P.L. 106-265, Title II, 2000 U.S.C.C.A.N (114 Stat.) 762, 770, codified at 5 U.S.C. § 8331 note. As the U.S. Court of Appeals for the Federal Circuit explained, the statute addresses the problems created when employees are in the wrong retirement plan for an extended period. 5 C.F.R. § 839.101(a). An employee can seek relief under FERCCA if that employee experienced a qualifying retirement coverage error. A “qualifying retirement coverage error” is “an erroneous decision by an employee or agent of the Government as to whether Government service is CSRS covered, CSRS Offset covered, FERS covered or Social Security-Only covered that remains in effect for at least 3 years of service after December 31, 1986. . . .” 5 C.F.R. § 839.102.

Prior to 1984, Federal employees were typically covered by CSRS. In 1983, Public Law 99-335 created a new retirement system for Federal employees, FERS. *CSRS and FERS Handbook for Personnel and Payroll Offices* (Handbook, <https://www.opm.gov/retirement-center/publications-forms/csrsfers-handbook/c010.pdf>), §§ 10A1.1-2(C) and (G), and 10A1.2-1(E). FERS became effective on January 1, 1987, and CSRS became a closed system for new employees and existing employees who had yet to vest in CSRS or were not covered by CSRS. *Handbook*, 10A1.2-1(B), and (F). In January of 1987, the Federal Employees Retirement System (FERS), replaced the Civil Service Retirement System (CSRS). Employees were automatically covered by FERS unless the employee had five years of creditable civilian service prior to 1987. *CSRS and FERS Handbook for Personnel and Payroll Offices*, Section 10A1.1-2(G)-(H) (April 1998).

The appellant contended he should have been placed in CSRS. AF, Tab 1; AF, Tab 2 at 15. To be eligible for a CSRS annuity an employee must complete 5 years of creditable service and at least one of the last 2 years must be covered service. 5 U.S.C. § 8333; *Herrera v. United States*, 849 F.2d 1416, 1417 (Fed. Cir. 1988). Most service is creditable, but that is not the same as covered. *Herrera*, 849 F2d at 1417. Term and temporary appointments are excluded from

CSRS coverage. *Encarnado v. Office of Personnel Management*, 116 M.S.P.R. 301, ¶ 8 (2011) 5 C.F.R. § 831.201.

As indicated above, and as evidenced by the written record, the appellant did not enter retirement covered Federal service until July 15, 1987. Specifically, the appellant was employed under FICA only, or in nondeduction service, from June 25, 1979 – August 31, 1979; January 13, 1980 – November 12, 1983; and July 16, 1984 – July 14, 1987. AF, Tab 3 at 92-142; AF, Tab 2 at 7. These were term or temporary appointments, and thus specifically excluded from CSRS coverage. AF, Tab 3 at 114 (temporary appointment July 16, 1984), *Id.* at 116, 119 (temporary appointment December 26, 1982, Not to Exceed (NTE) December 25, 1983 terminated November 12, 1983); *Id.* at 123 (June 25, 1979 appointment date, Summer Aid); *Id.* at 133 (appointment April 5, 1982), *Id.* at 139-40 (appointment termination April 2, 1982 from position of Student Aide). While the service may be creditable service, it is not covered CSRS service. 5 C.F.R. § 831.201. The appellant was converted to a career appointment July 15, 1987. AF, Tab 3 at 92. This was after CSRS closed, December 31, 1986. Hence, at the time the appellant would have potentially been eligible to join CSRS that system was already closed. The appellant, thus, fell into a category of employees who had 5 years of creditable but not covered retirement service, and therefore were not automatically covered by FERS, but were excluded from CSRS coverage. *Handbook* § 10A1.1-2(I). Those employees had the option of either enrolling in FERS or CSRS Offset. *Handbook* § 10A1.1-2(E).

Although the appellant was initially enrolled in FERS, the agency converted the appellant to CSRS Offset, pursuant to FERCCA based on the appellant's election. AF, Tab 3 at 92-93. According to the appellant's SF-50 dated February 28, 2008, the appellant elected to be in CSRS Offset on November 30, 2007. AF, Tab 3, at 93. Because, the appellant elected to be in CSRS Offset, his placement was not erroneous. The appellant stated he did not understand the ramifications of his election, and instead believed he was in CSRS

instead of CSRS Offset. Yet, as stated above, the appellant was not eligible for CSRS and therefore he was not entitled to elect it. Further, I find the agency notified the appellant of the retirement system in which he was placed based on his SF-50s dating back to February 28, 2008. AF, Tab 3 at 3, 5-15, 93.

The appellant asserted he did not understand the ramifications of the various options, and they were not properly explained to him. AF, Tab 18. While this may be true, and I understand that the Federal retirement systems are very confusing as evidenced by the need for FERCCA, this does not authorize the Board to provide the appellant with a benefit to which he is not entitled.

I find the appellant had the option of being enrolled in FERS or CSRS Offset, but not CSRS because the appellant never held a CSRS covered appointment. The agency changed the appellant to CSRS Offset pursuant to his November 30, 2007 election. AF, Tab 3, at 93. I find the appellant is not entitled to any further relief under FERCCA.

OPM properly reduced the appellant's annuity at age 62

Under CSRS Offset an employee is entitled to receive both a CSRS annuity and old-age benefits from the Social Security Administration (SSA). 5 C.F.R. § 831.1001. Upon reaching the age of eligibility for SSA old-age benefits, OPM is required to reduce or offset the annuitant's CSRS annuity. 5 U.S.C. § 8349(a)(1); 5 C.F.R. § 831.1005.

Here, OPM notified the appellant of the change to his retirement system coverage first by an SF-50 dated February 28, 2008. AF, Tab 2 at 12. This change to the appellant's retirement system was reflected on each of the appellant's SF-50s issued after that date. AF, Tab 3 at 3, 5-15. In addition, OPM notified the appellant he was assigned to CSRS Offset in letters to him dated December 21 and 26, 2015. AF, Tab 2 at 6-8. In the latter letter, OPM specifically notified the appellant that his CSRS annuity would be offset by social security benefits upon reaching the age of 62 based on his eligibility for benefits.

Id. at 8. I find the agency made no error in adjusting the appellant's annuity to account for the offset based on the appellant's eligibility for social security old-age benefits.

Based on the foregoing, I find the appellant was not eligible for CSRS coverage, and therefore OPM did not err by denying his request for a CSRS annuity. Instead, I find the appellant was properly enrolled in CSRS Offset and OPM correctly adjusted his annuity when the appellant became eligible for social security old age benefits at age 62.

Accordingly, I find the appellant is not entitled to any relief. Instead, I find OPM correctly reduced the appellant's annuity.

DECISION

The agency's reconsideration decision is **AFFIRMED**.

FOR THE BOARD:

_____/S/_____
Melissa Mehring
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **July 6, 2023**, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. If you are represented, the 30-day period begins to run upon either your receipt of the initial decision or its receipt by your representative, whichever comes first. You must establish the date on which you or your representative received it. The date on which the initial decision becomes final also controls when you can file a petition for review with one of the authorities discussed in the "Notice of Appeal Rights" section, below. The

paragraphs that follow tell you how and when to file with the Board or one of those authorities. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review.

If the other party has already filed a timely petition for review, you may file a cross petition for review. Your petition or cross petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file it with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.
Washington, DC 20419

A petition or cross petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (<https://e-appeal.mspb.gov>).

Criteria for Granting a Petition or Cross Petition for Review

Pursuant to 5 C.F.R. § 1201.115, the Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact. (1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain

why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing.

(b) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The petitioner must explain how the error affected the outcome of the case.

(c) The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed.

As stated in 5 C.F.R. § 1201.114(h), a petition for review, a cross petition for review, or a response to a petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages or 7500 words, whichever is less. A reply to a response to a petition for review is limited to 15 pages or 3750 words, whichever is less. Computer generated and typed pleadings must use no less than 12 point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to

submit pleadings of the maximum length. Typically, a well-written petition for review is between 5 and 10 pages long.

If you file a petition or cross petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. A petition for review must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you or your representative more than 5 days after the date of issuance, 30 days after the date you or your representative actually received the initial decision, whichever was first. If you claim that you and your representative both received this decision more than 5 days after its issuance, you have the burden to prove to the Board the earlier date of receipt. You must also show that any delay in receiving the initial decision was not due to the deliberate evasion of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (*see* 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by fax or by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. *See* 5 C.F.R. § 1201.4(j). If the petition is filed electronically, the online process itself will serve the petition on other e-filers. *See* 5 C.F.R. § 1201.14(j)(1).

A cross petition for review must be filed within 25 days after the date of service of the petition for review.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

NOTICE OF APPEAL RIGHTS

You may obtain review of this initial decision only after it becomes final, as explained in the "Notice to Appellant" section above. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this decision when it becomes final, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within **60 calendar days** of the date this decision becomes final. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (*not* the U.S. Court of Appeals for the Federal Circuit), within **30 calendar days after this decision becomes final** under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. *See* 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within **30 calendar days after this decision becomes final** as explained above. 5 U.S.C. § 7702(b)(1).

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 77960
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations
Equal Employment Opportunity Commission
131 M Street, N.E.
Suite 5SW12G
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D). If so, and your judicial petition for review “raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D),” then you may file a petition for judicial review with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within

60 days of the date this decision becomes final under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx

Anthony Bowden
1415 D. Street, NE Washington, DC 20002

February 7, 2022

United States Office of Personnel Management
Retirement Services
P.O. Box 45
Boyers, PA 16017

Ladies and Gentlemen:

I am writing you in response to the attached letter I received regarding a reduction in my annuity. It is my understanding from OPM telephone representative that I spoke with on Tuesday, January 25th my annuity was reduced because I was on the CSRS Offset Retirement system.

My first tenure with the federal government was in 1978 as summer student at Defense Mapping Agency. I believe starting in 1980 through 1983, I worked for the U.S. Department of Justice, Uniform Services University of Health Sciences apart of the Department of Defense, and the General Services Administration. I had a brief break for about 6-7 months before I started working for Smithsonian Institution in July of 1984. I have never had a break in service that lasted for more than 1 year from 1980-2015. I retired from Smithsonian Institution in 2015, due to an on the injury that left be disabled.

The Smithsonian Institution made an error and put me on Federal Retirement Systems (FERS) retirement. I tried to explain to Human Resources (HR) personnel on several occasions that I did not belong on the FERS. I was working with Diana Needer, the Human Resource Specialist.

I believe it was a couple years or less prior to my retirement in 2015 the HR department determined that they made mistake by putting me on FERS when I should have been on CSRS. I believe Smithsonian HR was able to move my benefits from FERS to CSRS. However, they were not able to transfer any money that was contributed to Social Security retirement. When I went Social Security prior to retirement I was informed that no money would be transferred because they are two separate entities.

I went to HR and told them I wanted to apply for disability retirement due to my on-the-job injury that occurred in 2009 that prevented me from working full time. Smithsonian management informed me that they did not have any light duty or part time work for me although I sustained my injuries on the job. I was told by HR I could not retire on disability and that Smithsonian had nothing to do with my disability retirement and I was unable to retire on

Attachment E

disability under CSRS. I was directed to go to social security administration to apply for disability retirement, which I did, and I am currently receiving social security disability. I have been doing some research, and I have learned I should have been able to apply for disability under CSRS as I believe the Smithsonian's H.R. department was untruthful. CSRS disability would have afforded increase in my annuity due to on-the-job injury and a tax-free benefit.

I would like to request an investigation/review of of my personnel file to determine if I was on the correct retirement plan and if I should have been afforded opportunity for CSRS disability. I do not believe I should have been placed on CSRS offset and now I am being subject to a reduction in my annuity causing me financial hardship due to an error made by the Smithsonian Institution. I believe I should have been on the CSRS retirement system, not the CSRS offset.

If you have questions or require additional information, please contact me at 202-528-7458 or abowden1214@comcast.net.

Sincerely,

Anthony Bowden, Sr.

Anthony Bowden Sr.

Cc: Honorable Congresswoman Eleanor Holmes Norton



Retirement Services

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

07/11/2022

CSA 4 773 900

ANTHONY BOWDEN
1415 D ST NE
WASHINGTON DC 20002

Dear Mr. Anthony Bowden:

Thank you for your inquiry concerning the recalculation of your Civil Service Retirement System (CSRS).

We have recalculated your annuity to not include your CSRS Offset retirement. With the change in the recalculation, your annuity has changed from \$3,574.00 to \$5,113.00.

Our records have been updated to reflect that you will receive a underpayment of \$18,405.00 minus \$3,681.00 (code 31) for federal taxes.

Please contact us if you have any further questions or concerns.

Sincerely,

Nicole Tyson

Post Retirement Branch
Claims 1 Group, Branch 4

Enclosures:
Paid and Due Computation

Attachment D

From: Anthony Bowden ABOWDEN1214@COMCAST.NET
Subject: Re: Final Follow Up on Your Congressional Inquiry (Intranet Quorum IMA00170901)
Date: August 7, 2022 at 12:37 PM
To: Congresswoman Eleanor Holmes Norton(imailgent) DC00ENIMA@mail.house.gov




Hello,

I thank you for your help with this matter with upmost respect.

Kind Regards,

Anthony Bowden, Sr.

On Jul 19, 2022, at 2:05 PM, Congresswoman Eleanor Holmes Norton(imailgent) <DC00ENIMA@mail.house.gov> wrote:

ELEANOR HOLMES NORTON DISTRICT OF COLUMBIA COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEES CONSUMER PROTECTION, HIGHWAYS AND TRAILERS ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT RAILROADS, FREIGHT, AND HAZARDOUS MATERIALS	 Congress of the United States House of Representatives Washington, DC 20515-1501	COMMITTEE ON OVERSIGHT AND REFORM SUBCOMMITTEES CIVIL RIGHTS AND CONSUMER PROTECTION GOVERNMENT OPERATIONS
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July 19, 2022

Mr. Anthony Bowden Jr.
1415 D Street NE
Washington, DC 20002-5401

RE: Mr. Anthony Bowden Jr.

Dear Mr. Bowden:

I received the attached in response to my inquiry on your behalf. I hope you find the information provided helpful.

If I may be of further help on this, or any matter that falls within my federal legislative and administrative jurisdiction, please do not hesitate to get in touch with me.

Thank you for giving me this opportunity to be of service to you.

Sincerely,


Eleanor Holmes Norton
Member of Congress

EHN:nc

For a prompt response, do not alter the email subject line when replying.

FRANK DODD'S OFFICE
6000 PENN PLAZA N.W.
NINTH FLOOR, WASHINGTON, DC 20001

2155 RAUBER HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515-0701
(202) 225-4000

500 EAST DODD OFFICE
2205 SHANNON PLACE, S.E. WASHINGTON, DC 20003

Attachment DC Out

1500 Pennsylvania Avenue, N.W., Suite 841000
Washington, D.C. 20004-3005
(202) 438-4041
(202) 438-3048 (fax)

WORLDWIDE WEB SITE
(202) 225-3000 (TDD)
WWW.HUMANRESOURCES.GOV
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WASHINGTON, D.C. 20003-7705
(202) 678-4700
(202) 678-4044 (fax)

<WF Attachment 5446094 BOWDEN Anthony OPM final response_07.19.22.pdf><IQFormatFile.txt>

Attachment D cont.

From: Anthony Bowden abowden1214@comcast.net
Subject:
Date: September 9, 2022 at 1:08 PM
To: Anthony Bowden abowden1214@comcast.net



Retirement Services

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

07/11/2022

CSA 4 773 900

ANTHONY BOWDEN
1415 D ST N E
WASHINGTON DC 20002

Dear Mr. Anthony Bowden:

Thank you for your inquiry concerning the recalculation of your Civil Service Retirement System (CSRS). This is in regards to your request to have your Social Security Offset stopped, however, as stated in your December 23, 2021 letter, "regardless of whether you applied for the SSA benefit or have begun to receive it. The offset is in keeping with the provisions of the Federal Employees Contribution Temporary Adjustment Act (Public Law (PL) 98-168) and the Federal Employees Retirement Act (PL99-335)".

SSA has verified that you are eligible for social security benefits. Based on benefit amounts SSA provided us, the offset amount is \$1406.30. This amount is the portion of the monthly social security benefit you are eligible to receive as a result of any Federal service you performed after December 31, 1983 while covered by both Federal Insurance Contributions Act (FICA) and Civil Service Retirement System (CSRS) deductions.

Based on SSA's verification, we reduced your gross monthly annuity by the offset amount. Your adjusted gross monthly annuity after the offset reduction is \$3,574.

You will see this reduction in the payment you receive the first business day of February 2022, which represents the payment for the month of January 2022. The offset was imposed timely upon your SSA eligibility date, no retroactive collection is due.

This represents an initial decision of the Office of Personnel Management (OPM). If you wish to dispute our findings, you may request reconsideration. We have enclosed Information and Instructions on Your Reconsideration Rights (form RI 38-47), which explains how to file your request. Please note that the request for reconsideration must be filed within 30 days of the date of this letter.

Please contact us if you have any further questions or concerns.

Sincerely,

Nicole Tyson

Post Retirement Branch
Claims 1 Group, Branch 4

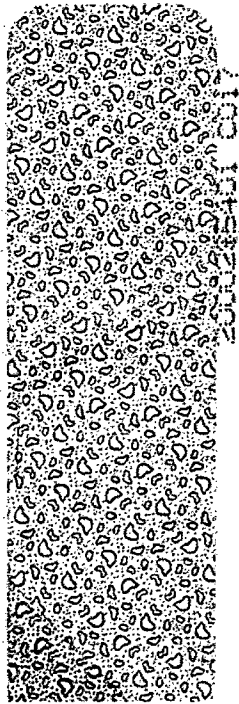
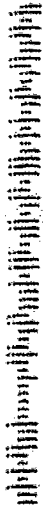
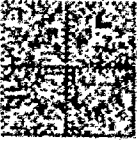
Attachment E

information, and you are not required to respond, unless this number is displayed.

RI 31
Revised July 2

Previous editions are not usable

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Attachment F