

APPENDIX

A

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NOTE: This order is nonprecedential.

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

LAWRENCE WHITE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2024-1561

Petition for review of the Merit Systems Protection
Board in No. DC-0831-21-0247-I-2.

ON PETITION FOR REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA,
TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and
STARK, *Circuit Judges*.¹

PER CURIAM.

ORDER

¹ Circuit Judge Newman did not participate.

Lawrence White filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 25, 2024
Date

NOTE: This disposition is nonprecedential.

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

LAWRENCE WHITE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2024-1561

Petition for review of the Merit Systems Protection
Board in No. DC-0831-21-0247-I-2.

Decided: October 8, 2024

LAWRENCE WHITE, Mount Rainier, MD, pro se.

LAURA OFFENBACHER ARADI, Commercial Litigation
Branch, Civil Division, United States Department of Jus-
tice, Washington, DC, for respondent. Also represented by
BRIAN M. BOYNTON, PATRICIA M. MCCARTHY, LOREN MISHA
PREHEIM.

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

PER CURIAM.

Lawrence White appeals pro se a final order of the Merit Systems Protection Board denying his petition for review of an initial decision regarding his annuity retirement benefit. We affirm.

BACKGROUND

Mr. White served in various roles in the federal government for over forty-six years. SAppx46.¹ He retired from federal service in March 2020. SAppx8. Shortly thereafter, the Office of Personnel Management (“OPM”) notified Mr. White that it had finalized and authorized payment of his annuity retirement benefit. SAppx53. In July 2020, Mr. White notified OPM that he disagreed with several aspects of OPM’s computation of his annuity, and that OPM should have returned his excess retirement deductions from his years of service that exceeded forty-one years and eleven months. SAppx51. In August 2020, OPM notified Mr. White that it had correctly computed his annuity and explained the basis for the computation. SAppx43–44. As relevant here, OPM explained that in 1979, Mr. White applied for and received a refund of his retirement contributions totaling \$4,178.58 and that his receipt of this refund resulted in a deduction to his annuity. *Id.* OPM also explained that while Mr. White had excess retirement deductions from his service that exceeded forty-one years and eleven months, OPM applied the entirety of Mr. White’s excess deductions to service periods in which Mr. White did not have any retirement deductions withheld. SAppx43.

In September 2020, Mr. White sought reconsideration of OPM’s computation. SAppx49. Mr. White argued that he only received a refund of “about \$1,300 something” in 1979, not \$4,178.58. *Id.* In January 2021, OPM issued a

¹ “SAppx” refers to the appendix accompanying the government’s responsive brief.

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final decision affirming its computation of Mr. White's annuity. SAppx40–42.

In February 2021, Mr. White appealed to the Merit Systems Protection Board (“Board”), again alleging that he never received the full amount of the 1979 refund and that OPM should have returned his excess retirement deductions from his service that exceeded forty-one years and eleven months. SAppx38–39. An administrative judge affirmed OPM's final decision. *White v. Off. of Pers. Mgmt.*, No. DC-0831-21-0247-I-2, 2022 WL 828629 (M.S.P.B. Mar. 14, 2022) (SAppx7–29) (“*Initial Decision*”). In April 2022, Mr. White filed a petition for review of the administrative judge's initial decision. SAppx64–89. The Board denied Mr. White's petition for review and thus the administrative judge's initial decision became the Board's final decision. *White v. Off. of Pers. Mgmt.*, No. DC-0831-21-0247-I-2, 2024 WL 621409 (M.S.P.B. Feb. 13, 2024) (SAppx30–37) (“*Final Decision*”).

Mr. White appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

STANDARD OF REVIEW

Our review of Board decisions is limited. 5 U.S.C. § 7703(c). We set aside a Board decision only when it is “(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.” *Id.*

DISCUSSION

Mr. White argues that the Board erred in affirming OPM's computation of his annuity because Mr. White never received the total amount of the \$4,178.58 refund from 1979. Appellant Informal Br. 4. According to Mr. White, there is no record or payment history to show that he received the full refund amount. *Id.* Mr. White also argues that the Board further erred because OPM should

have returned his excess retirement deductions from his service that exceeded forty-one years and eleven months. *Id.* We are not persuaded that the Board erred.

Mr. White bears the burden to establish that he did not receive a full refund of his retirement contributions or that he is entitled to additional retirement benefits. *See Cheeseman v. Off. of Pers. Mgmt.*, 791 F.2d 138, 141 (Fed. Cir. 1986). A claimant's uncorroborated assertion that he did not receive a refund does not satisfy the claimant's burden when there has been a significant delay in reporting the non-receipt, and OPM has introduced ordinary course of business evidence to the contrary. *See Rint v. Off. of Pers. Mgmt.*, 48 M.S.P.R. 69, 71-72 (1991), *aff'd*, 950 F.2d 731 (Fed. Cir. 1991); *see also Landvogt v. Off. of Pers. Mgmt.*, 516 F. App'x 923, 925 (Fed. Cir. 2013).

The Board considered Mr. White's testimony that he only received a partial refund and weighed that testimony against OPM's evidence to the contrary. SAppx14-19. Specifically, the Board credited a record OPM provided known as a Standard Form 2806. SAppx17. This record lists the total amount of Mr. White's cumulative retirement deductions from 1973 to 1979 as \$4,178.58. SAppx17; *see also* Appellant Informal Br. 20 (copy of Standard Form 2806 appended to Mr. White's brief). It also includes handwritten notations under the heading "Refund Authorized" and subheading "Payment," which list \$4,178.58 and a signature dated November 1, 1979. SAppx17; *see also* Appellant Informal Br. 20. Below the handwritten notations is a date stamp reflecting a date of November 7, 1979. SAppx17; *see also* Appellant Informal Br. 20. The Board found "no indication that OPM processed only a partial refund," deemed Mr. White's version of events "inherently unlikely," and determined that Mr. White failed to show that he did not receive the full refund. SAppx16-17.

We agree with the Board that Mr. White failed to carry his burden to prove non-receipt of the full amount of the

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authorized refund of \$4,178.58 in 1979. The only evidence Mr. White presented to support his argument that he did not receive the full amount of the refund is his own testimony. Because Mr. White's testimony is uncorroborated, and there has been a significant delay since OPM issued the 1979 refund to Mr. White, OPM's record of payment is substantial evidence supporting the Board's conclusion that Mr. White received the 1979 refund in full. SAppx14-19; *Rint*, 48 M.S.P.R. at 71-72.

The Board also considered Mr. White's argument that OPM should have returned his excess retirement deductions from his service that exceeded forty-one years and eleven months. The Board found that Mr. White submitted "little to no evidence in support of his claim[]." SAppx21. In light of this finding and OPM's evidence to the contrary, the Board concluded that Mr. White "failed to establish by preponderant evidence that OPM's calculation of his annuity was incorrect." *Id.*

We agree with the Board that Mr. White failed to carry his burden of proof. Mr. White does not appear to dispute that he had several years of nondeduction service. Nor does Mr. White dispute the requirement that OPM apply excess deductions to periods of nondeduction service. In sum, Mr. White provides no basis as to why the Board's determination was legally erroneous, arbitrary, capricious, procedurally improper, or unsupported by substantial evidence. And we do not discern any such error.

CONCLUSION

We have considered Mr. White's remaining arguments and find them unpersuasive. For the reasons stated, we affirm the Board's denial of Mr. White's petition for review.

AFFIRMED

COSTS

No costs.

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

LAWRENCE WHITE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2024-1561

Petition for review of the Merit Systems Protection Board in
No. DC-0831-21-0247-I-2.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

October 8, 2024
Date



Jarrett B. Perlow
Clerk of Court

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

LAWRENCE WHITE,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2024-1561


Petition for review of the Merit Systems Protection
Board in No. DC-0831-21-0247-I-2.

MANDATE

In accordance with the judgment of this Court, entered
October 8, 2024, and pursuant to Rule 41 of the Federal
Rules of Appellate Procedure, the formal mandate is
hereby issued.

FOR THE COURT

December 2, 2024
Date


Jarrett B. Perlow
Clerk of Court

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

LAWRENCE WHITE,
Appellant,

DOCKET NUMBER
DC-0831-21-0247-I-2

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: February 13, 2024

THIS FINAL ORDER IS NONPRECEDENTIAL¹

Lawrence White, Mount Rainier, Maryland, pro se.

Tanisha Elliott Evans, Washington, D.C., for the agency.

BEFORE

Cathy A. Harris, Vice Chairman
Raymond A. Limon, Member

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which sustained the final decision of the Office of Personnel Management (OPM) calculating the appellant's retirement annuity under the Civil Service Retirement System. On petition for review, the appellant argues, among other things, that OPM owes him excess retirement deductions, he received only a partial refund of

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See 5 C.F.R. § 1201.117(c).

his retirement deductions in 1979, and OPM erred in applying the Social Security offset which reduced his annuity. Generally, we grant petitions such as this one only in the following circumstances: the initial decision contains erroneous findings of material fact; 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 administrative 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; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115). After fully considering the filings in this appeal, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review and AFFIRM the initial decision, which is now the Board's final decision.² 5 C.F.R. § 1201.113(b).

NOTICE OF APPEAL RIGHTS³

You may obtain review of this final decision. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time limit for seeking such

² With his petition for review, the appellant files a number of documents, including a National Personnel Records Center reply to inquiry form, an illegible Notification of Personnel Action form, a FAQ sheet regarding the Treasury Offset Program, information sheets on leave without pay and its impact on benefits, and a title page from a hearing before the House of Representatives. Petition for Review File, Tab 1 at 18-25. The appellant has not shown that these documents were unavailable prior to the close of the record below and has not explained the relevance of these documents to the dispositive issues in his appeal. Thus, they provide no basis to disturb the initial decision. *Russo v. Veterans Administration*, 3 M.S.P.R. 345, 349 (1980) (stating that, the Board will not grant a petition for review based on new evidence absent a showing that it is of sufficient weight to warrant an outcome different from that of the initial decision).

³ Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

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 final decision, 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 of issuance of this decision. 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.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

LAWRENCE WHITE,
Appellant,

DOCKET NUMBER
DC-0831-21-0247-I-2

v.

OFFICE OF PERSONNEL
MANAGEMENT,
Agency.

DATE: March 14, 2022

Lawrence White, Mount Rainier, Maryland, pro se.

Angerlia D. Johnson, Washington, D.C., for the agency.

BEFORE

Lindsay Young Harrell
Administrative Judge

INITIAL DECISION

On February 13, 2021, the appellant filed the above-captioned appeal challenging the calculation of his Civil Service Retirement System (CSRS) annuity benefit was incorrectly calculated, including but not limited to an allegation that he did not receive the full amount of a refund he requested in 1979 with respect to his retirement contributions. Initial Appeal File (IAF), Tab 1. The Board has jurisdiction over this appeal pursuant to 5 U.S.C. § 8347(d) and 5 C.F.R. § 831.110. For the reasons that follow, the Office of Personnel Management (OPM or agency)'s final decision is AFFIRMED.

ANALYSIS AND FINDINGS

Background

The following facts are undisputed in the evidence of record, or where they are disputed, represent my findings of fact. The appellant was employed by the United States Postal Service (USPS) from April 1973 to June 1979. IAF, Tab 6 at 40. During this time, he was covered by the CSRS retirement system: *Id.* From March 1980 to September 1982, and also from October 1982 through June 1984, the appellant was employed by the Department of the Army and his service was documented as “FICA Only.” *Id.* From June 1984 to March 2020, the appellant performed “CSRS Offset” service for the Department of the Army and/or the Defense Commissary Agency¹. *Id.* On March 31, 2020, the appellant retired from federal service. *Id.* at 11, 36. The Department of Defense certified the appellant’s total years of service as 46 years, 1 month, and 15 days. IAF, Tab 6 at 11. It also documented the appellant’s unused sick leave balance as 3,418 hours and his “high three” average salary² as \$44,229. *Id.* at 11, 63.

On July 14, 2020, OPM finalized the appellant’s annuity. IAF, Tab 6 at 27, 31. On July 22, 2020, the appellant sent an email inquiry to OPM’s Retirement Services Branch account expressing his disagreement with the “finalized process” with respect to the computation of his annuity. IAF, Tab 6 at 26. Therein, he appeared to challenge the agency’s computation of his “high three” average salary, the conversion of his hours of sick leave into work time, and the application of excess retirement deductions. *See id.*

¹ From 1991 to 2020, the appellant worked for the “DCA.” IAF, Tab 6 at 40. Here, it appears “DCA” is a reference to the Defense Commissary Agency, which is generally referenced by the acronym “DeCA”. *See* IAF, Tab 6 at 36 (appellant’s application for retirement showing his employing agency as the “DeCA Ft. Myer Commissary”).

² A retiree’s “high three” average salary is the highest average basic pay the individual earned during any consecutive three years of service. *See* <https://www.opm.gov/retirement-services/fers-information/computation/> (last visited March 3, 2022).

On August 3, 2020, the agency responded to the appellant's concerns by letter. IAF, Tab 6 at 22-23. OPM asserted that its calculation of the appellant's annuity was correct. *Id.* at 22. It attached documentation explaining how it calculated the appellant's "high three" average salary as \$44,229.00. *Id.* at 22. It also noted the appellant's annuity prior to any reductions was \$36,783.78, a figure it computed by determining 80% of the appellant's average salary and then adding 2% for his 1 year and 7 months of unused sick leave at the time of his retirement. *See id.* at 22. OPM also noted the appellant was eligible for excess retirement deductions due to his having worked for more than 41 years and 11 months. *See id.* at 22. When OPM applied these deductions to the appellant's annuity, it determined they were enough to cover the deposit for his period of nondeduction service³ from September 1982 to June 1984. IAF, Tab 6 at 22. Thus, OPM fully credited the appellant's annuity with respect to this period of time. *Id.* Nevertheless, the appellant also had nondeduction service from March 1980 to September 1982. OPM applied the balance of the appellant's excess deductions to this period of nondeduction service; even so, \$6,013.00 remained with respect to the unpaid deposit. *Id.* According to OPM, this period of service was therefore creditable subject to a reduction equal to 10% of the unpaid deposit. *Id.* Therefore, OPM reduced the appellant's annuity by \$613.00, which brought it to \$36,182.44 (\$3,015 gross per month). *Id.*

Additionally, it is undisputed that the appellant applied for a refund of his retirement deductions when he left federal service in June 1979. IAF, Tab 6 at 54. OPM authorized the payment of \$4,178.58 to the appellant in November 1979, but has no further information regarding the payment itself. *Id.* at 23. The appellant does not dispute that he received some portion of this payment; however, he has alleged that the amount he received was approximately

³ Nondeduction service is a period of service when no retirement deductions are withheld from an individual's pay.

\$1,300.00. *Id.* at 20. The parties do not dispute that the appellant did not repay either amount with interest prior to his retirement in March 2020. OPM, acting based on the presumption that the appellant received his full refund, permanently reduced the appellant's annuity by \$75 per month, making his gross monthly annuity \$2,940.00. *Id.* at 22.

Finally, OPM assessed a further reduction of the appellant's annuity due to a Social Security offset⁴ totaling \$1,050.20 per month. IAF, Tab 6 at 23, 33. Specifically, OPM found that deductions were withheld from the appellant's annuity for both Social Security and CSRS from 1984 through his retirement in 2020, despite the fact that the appellant was eligible for Social Security benefits during part of that time period. *See id.* at 23; *see also* IAF, Tab 6 at 31. This reduction brought the appellant's gross monthly annuity down to \$1,889.00.⁵ IAF, Tab 6 at 32. OPM noted the appellant's employing agency did not include this offset in the retirement annuity estimate it provided to the appellant. *Id.* at 7, 23. For these reasons, OPM affirmed its computation of the appellant's annuity and provided him with information regarding the reconsideration process if he disagreed with the initial decision. *Id.* at 22-24.

On September 2, 2020, the appellant postmarked a written request for reconsideration. IAF, Tab 6 at 20. Therein, the appellant explained that he was not asserting that he didn't receive a refund; rather, he stated he received only approximately \$1,300 of the \$4,178.58 amount authorized by OPM. *Id.* at 20. He also requested to know where OPM obtained the record of his 1979 refund request with respect to his retirement deductions. *Id.* at 20. On January 27,

⁴ In the record, this offset is sometimes referred to as a "Social Security offset" and other times as a "CSRS offset." *See, e.g.,* IAF, Tab 6 at 7.

⁵ In a letter to the appellant dated July 14, 2020, the agency referenced the appellant's final gross monthly annuity as \$1,899.00. IAF, Tab 6 at 31. This appears to be a typographical error based on the calculations shown on the attached worksheet. *Id.* at 32.

2021, OPM issued a final reconsideration decision affirming its original computation of the appellant's annuity. IAF, Tab 6 at 11-12. Therein, OPM informed the appellant of his right to file a Board appeal. *Id.* at 12. This appeal ensued on February 13, 2021. IAF, Tab 1.

Applicable Law

The appellant has the burden of proving his entitlement to the retirement benefits he seeks. *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). As such, the burden is on the appellant to demonstrate that OPM has miscalculated his CSRS retirement annuity, or that he is otherwise entitled to a greater annuity than that which OPM has certified. The Standard Form (SF) 2806, the Individual Retirement Record, is the basic record for action on all claims for annuity or refund. *See* 5 C.F.R. § 831.103(a).

As is relevant here, 5 C.F.R. § 831.303(a) provides:

Periods of civilian service performed before October 1, 1982, for which retirement deductions have not been taken. Periods of creditable civilian service performed by an employee or Member after July 31, 1920, but before October 1, 1982, for which retirement deductions have not been taken shall be included in determining length of service to compute annuity under subchapter III of chapter 83 of title 5, United States Code; however, if the employee, Member, or survivor does not elect either to complete the deposit describes by section 8334(c) of title 5, United States Code, or to eliminate the service from annuity computation, his or her annuity is reduced by 10 percent of the amount which should have been deposited (plus interest) for the period of noncontributory service.

Further, 5 C.F.R. §831.303(c)(1)(ii) states:

An employee or Member whose retirement is based on a separation on or after October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that

ended before March 1, 1991, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code.

Likewise, 5 C.F.R. § 831.303(c)(2) provides that:

The beginning monthly rate of annuity payable to a retiree whose annuity includes service credited in accordance with paragraph (c)(1) of this section will be reduced by an amount equal to the redeposit owed, or unpaid balance thereof, divided by the present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate will then be rounded down to the next lower dollar amount and becomes the rate of annuity payable.

As is also relevant here, the annuity of an individual who retires under the CSRS Offset retirement system is subject to an offset for periods of dually covered service, i.e., periods of time when the individual was eligible for Social Security benefits and was also covered by the CSRS Offset system. 5 C.F.R. § 831.1005(a). Such a reduction is calculated as follows:

Subject to paragraphs (d) and (e) of this section,⁶ the amount of the reduction required under paragraph (a) of this section is the lesser of -

- (1) The difference between -
 - (i) The Social Security old-age benefit for the month referred to in paragraph (b) of this section; and
 - (ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b) of this section, excluding all wages from Federal service, and assuming the annuitant was fully insured (as defined by section 215(a) of the Social Security Act (42 U.S.C. 414(a))); or
- (2) The product of -
 - (i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and
 - (ii) A fraction -

⁶ Paragraphs (d) and (e) of 5 C.F.R. § 831.1005 regard cost of living adjustments and certain aspects of the Social Security Act relating to reductions in Social Security benefits and computations regarding the Social Security windfall elimination provision.

- (A) The numerator of which is the annuitant's total Federal service, rounded to the nearest whole number of years not exceeding 40 years; and
(B) The denominator of which is 40.

See 5 C.F.R. § 831.1005(c).

Further, the appellant has the burden of proving that he did not receive a refund of his retirement contributions by a preponderance of the evidence. See *Manoharan v. Office of Personnel Management*, 103 M.S.P.R. 159, ¶ 12 (2006); *Sosa v. Office of Personnel Management*, 76 M.S.P.R. 683, 685-86 (1997). Under the CSRS, an employee “who has received a refund of retirement deductions” for a specified period of federal service is not entitled to service credit in the calculation of her annuity for that period unless the employee “deposit[s] the amount received, with interest.” 5 U.S.C. §§ 8334(d)(1); see also 5 U.S.C. § 8342(a); *Danganan v. Office of Personnel Management*, 55 M.S.P.R. 265, 268 (1992); *Rint v. Office of Personnel Management*, 48 M.S.P.R. 69, 72, *aff'd*, 950 F.2d 731 (Fed. Cir. 1991) (Table). Consequently, OPM must deny service credit for any CSRS annuity where its records demonstrate that the employee requested and received a refund of retirement deductions, and failed to make the appropriate re-deposit.

Where, as here, an employee claims that he did not receive a refund and there has been a significant delay in reporting the claim, the Board has held that an appellant’s uncorroborated claim of non-receipt, standing alone, is insufficient to prevail where OPM has introduced evidence to demonstrate that OPM: (1) authorized a refund and issued a voucher for payment in the ordinary course of business; and (2) confirmed that Department of the Treasury does not have a record suggesting that payment was never received. *Manoharan*, 103 M.S.P.R. 159, ¶ 12; *Sosa*, 76 M.S.P.R. at 685-86; *Aquino v. Office of Personnel Management*, 51 M.S.P.R. 265, 268 (1991); *Deleon v. Office of*

Personnel Management, 49 M.S.P.R. 369, 372-73 (1991); *Rint*, 48 M.S.P.R. at 71-72.

Procedural History

On May 19, 2021, I held a prehearing conference with the parties wherein I explained that the issues to be determined in this appeal were:

- (1) Whether the appellant can demonstrate, by a preponderance of the evidence, that he did not receive a full refund of his CSRS retirement contributions subsequent to his request for a refund in June 1979.
- (2) Whether the appellant can demonstrate, by a preponderance of the evidence, that he is entitled to a greater retirement annuity than \$1,889.00, for any reason other than the refund described in Issue #1.

See IAF, Tab 9 at 5; Tab 12 at 1. During the prehearing conference, I granted the appellant leave to submit additional documentation regarding Issue #1. IAF, Tab 12 at 2. He did so on May 20, 2021. IAF, Tab 13. In his submission, the appellant included a narrative statement in which he asserted that the Social Security Administration (SSA) did not agree that he was subject to an offset; rather, he stated SSA indicated that he was exempt from an offset “because of the windfall elimination[.]” *Id.* at 1. The appellant went on to question whether OPM actually received information from SSA with respect to his SSA monthly benefit (with and without his CSRS offset service). *Id.* at 3. He suggested OPM may have relied upon or created false information in this regard. *Id.* at 3. Finally, the appellant questioned OPM’s assertion that his employing agency had failed to include information regarding the necessary offset(s) and asserted that if so, the retirement process should address such issues. *Id.* at 3. He attached portions of the agency’s documentation regarding the CSRS offset as well as a SSA fact sheet discussing the Windfall Elimination Provision, which can reduce an individual’s Social Security benefits when applicable. *Id.* at 5-10.

Appellant's Testimony

On May 25, 2021, I held the appellant's requested hearing by telephone. IAF, Tab 14 (Hearing Record or HR). The appellant was the sole witness to testify. *See* HR. He began by explaining that he took pride in his work and did use any of his accrued sick leave for nearly 20 years. *See* HR. The appellant testified that his work spoke for him and showcased his honesty. *See* HR. He recalled receiving retirement estimates in or around early 2020 when he was poised to retire. *See* HR. He further recalled that he was told that he owed approximately \$4,000, but did not believe this was correct. *See* HR. The appellant stated he went to OPM's offices in Washington, D.C. in February 2020 to request that OPM search its records for information related to the refund of his retirement contributions in 1979. *See* HR. According to the appellant, OPM could not locate any such information, but eventually came to a 1998 record showing a payment of \$1,346.58 made to him. *See* HR; *see also* IAF, Tab 6 at 19. He noted that while OPM informed him that this was merely a record of his retirement deductions from 1998 through 1991 (not a payment), he asserted he has received other documentation with respect to 1991 through 1993. *See* HR.

The appellant also discussed the November 1979 refund authorization document offered by OPM. *See* HR. He noted that it does not represent a payment having been made and includes the language "refund authorized." *Id.* Additionally, he pointed out that his application for a refund of his retirement deductions was made on a Civil Service Commission form as opposed to an OPM form. *See* HR. The appellant suggested that if a transition was underway at the time of his refund application, it could have been "a hectic time." *See* HR. He testified unequivocally that he did not receive [the amount of \$4,178.58] in 1979, and averred that if he had, he would not be present at this hearing. *See* HR. The appellant claimed he recalled being "downtown" with the check [for roughly \$1,300], and stated that if the check had been closer to \$4,000, "it would have

been almost as if I was rich, but it wasn't that way." *See* HR. He testified he did not repay the refunded amount. *See* HR.

The appellant also testified regarding his skepticism about the SSA sending any information to OPM that would have prompted OPM to reduce his annuity based on the SSA offset. *See* HR. Even so, the appellant declared, "I'm not saying that I'm not offset." *See* HR. Rather, he questioned whether OPM made a false statement in claiming that it had received information from SSA regarding his SSA monthly benefit (with and without applying his CSRS Offset service). *See* HR. He stated he "really [doesn't] know" if OPM made a false statement, but posited that if OPM did so, it might have made other false statements as well. *See* HR. As in his written documentation, the appellant asserted that SSA representatives told him he was not under a Social Security offset, in contrast with OPM's position. *See* HR. He also stated that his employing agency never discussed service under the CSRS or CSRS Offset with him and claimed he did not understand why his service was under CSRS from 1971 to 1979, and then again in 1984.⁷ *See* HR. When presented with March 2020 documentation from his agency estimating his retirement benefits, the appellant acknowledged that the estimate included the language, "An estimate of the Social Security Offset amount is not currently available. IAF, Tab 6 at 60; HR. Nevertheless, the appellant testified that he did not recall reading that portion of the estimate and stated, "I think I only read what the [amount of] money was." *See* HR.

The appellant has failed to show that he did not receive a full refund of his retirement deductions.

As is undisputed by the parties, I find the appellant requested a refund of his retirement service deductions in June 1979. IAF, Tab 6 at 54. Further, I find preponderant evidence exists to suggest that OPM authorized a refund of

⁷ As discussed above, during the intervening period from 1980 to 1984, the appellant performed temporary service subject to FICA-only deductions. IAF, Tab 6 at 40.

\$4,178.58 to the appellant in November 1979, and that the appellant subsequently received that amount. *Id.* at 23. Although the agency did not produce a voucher indicating that it paid the appellant the authorized amount, I find the evidence of record suggests he received \$4,178.58 as requested. While I considered the appellant's testimony regarding his receipt of what he recalls was a partial refund, including his recollection of his whereabouts at the time and his characterization of the amount received, I find the appellant's version of events is inherently unlikely for the reasons discussed below. *See* HR; *see also* *Hillen v. Department of the Army*, 35 M.S.P.R. 453, 458 (1987) (holding that an administrative judge, in determining credibility, must considering certain factors including but not limited to the inherent improbability of the witness's version of events).

First, the Board has held that normal office records, compiled in the ordinary course of business, are admissible and are entitled to substantial weight under these circumstances. *See Rint*, 48 M.S.P.R. at 72 (citing *Willey v. Department of Health and Human Services*, 16 M.S.P.R. 275, 278 (1983)). Here, the only piece of documentary evidence in the record regarding the amount of the refund is the appellant's Standard Form (SF) 2806, which shows \$4,178.58 as the total amount of the appellant's retirement deductions – no other figures or amounts follow this entry on the form. *See* IAF, Tab 6 at 55. Under the heading "Refund Authorized," the SF-2806 also bears two handwritten notations reflecting "\$4,178.58," the first appearing after the word "authorized" and the second following the word "payment." *Id.* The "adjudicator" who presumably entered these figures signed his or her name, and below the signature is the handwritten date "11-1-79." *Id.* Furthermore, below these notations is what appears to be a date stamp reflecting "NOV 07 1979." *Id.* I find these notations on the appellant's SF-2806, taken as a whole, suggest that OPM processed a payment of \$4,178.58 to the appellant on November 7, 1979. *See id.* In contrast, they do not provide support for the appellant's contention that OPM processed a

payment of roughly \$1,300 at that time. *See* IAF, Tab 6 at 55. Particularly given the absence of any other relevant documentation, I find this SF-2806 compelling with respect to the inference that OPM paid the appellant \$4,178.58 as opposed to any other amount.

Moreover, there is simply no indication that OPM processed only a partial refund under these circumstances, nor has the appellant suggested any reason that OPM would have done so. *See* HR. The appellant did not produce any contemporaneous documentation, such as a deposit slip or other notation, reflecting the amount he received. Likewise, he did not offer the testimony of any family members or friends with whom he might have discussed receiving the refund, nor did he submit any statements in this regard. While I recognize that the event in question occurred over 40 years ago, I note that such testimony or statements might have buttressed the appellant's own assertions, particularly in the absence of supporting documentation.

Finally, I considered the appellant's contention that on or about February 3, 2020, personnel at OPM's main office showed him a document reflecting that a refund of approximately \$1,346.58 was processed in 1998. *See* HR; *see also* IAF, Tab 6 at 8, 23; Tab 9 at 2. I find this assertion inherently improbable and inconsistent with the evidence of record. *See Hillen*, 35 M.S.P.R. at 458. First, the appellant's individual retirement record reflects that he had a change in payroll offices (i.e., a transfer to a new payroll provider) on May 10, 1998. IAF, Tab 6 at 47. Below that entry, the document states, "Prior Contributions to OPM" and the amount "\$1,346.58." *Id.* Thus, the agency has asserted this amount represents the appellant's CSRS Offset contributions withheld for the period of October 6, 1991 through May 9, 1998. *See* IAF, Tab 6 at 8; Tab 6 at 49 (appellant's individual retirement record showing a "Mass Transfer" on October 6, 1991 and a "Separation" on May 9, 1998 as part of the appellant's service history). Likewise, his fiscal record also reflects that his "Accumulative Total Salary Deductions" were \$1,346.58 in 1998. IAF, Tab 6 at 49. I find these

records support the agency's position and are entitled to substantial weight as part of the appellant's basic record with respect to his retirement. Furthermore, I find the appellant has offered no rationale, compelling or otherwise, in support of his theory that OPM would have authorized or processed a refund to the appellant in 1998 based upon the refund request he signed in June 1979, nearly 20 years prior. *See HR.* Absent any such support, I find it highly improbable that OPM issued the appellant a partial refund in 1998. Additionally, there is no indication in the appellant's retirement record of a refund having been authorized or processed in the amount of \$1,346.58, while the record does reflect that OPM authorized a refund of \$4,178.58 on November 1, 1979. *See IAF, Tab 6 at 55.* Therefore, I credit the agency's more plausible explanation that the \$1,346.58 figure the appellant may be referencing with respect to 1998 documented his retirement contributions for a period of his service, and was not representative of a refund of any nature.

For these reasons, I find the appellant has not established by preponderant evidence that he did not receive a full refund of his retirement deductions in November 1979. Thus, I find no error exists with respect to the calculation of the appellant's retirement annuity benefit as it relates to those deductions. In other words, I find OPM correctly denied the appellant service credit towards his annuity based on his receipt of a refund of his retirement deductions and failure to redeposit those funds.

The appellant has failed to show that OPM's calculation of his retirement benefit was otherwise incorrect.

Having determined that the appellant failed to demonstrate that he did not receive a full refund of his retirement deductions in 1979, I next considered whether the appellant has presented preponderant evidence establishing that his retirement benefit was incorrectly calculated for any other reason. The appellant's main argument in this vein is that OPM erred in reducing his annuity

when it applied a Social Security Offset of \$1,050.20. *See* HR; *see also* IAF, Tab 6 at 32, 34. In support of his claim, the appellant testified that he was told by the Social Security Administration (SSA) that he was not under a Social Security offset. *See* HR. He further questioned why OPM would have applied an offset when his employing agency had failed to provide him with an estimate of that amount. *See* HR; *see also* IAF, Tab 6 at 60 (appellant's CSRS Benefit Estimate Report stating that "[a]n estimate of the Social Security Offset amount is not currently available"). He also posited that OPM could have falsely claimed that it received information from the SSA in support of an offset of his annuity. *See* HR.

I find the appellant's arguments purely speculative and insufficient to establish an error in the agency's application of the Social Security Offset with respect to his annuity. *See* HR; *see also* IAF, Tab 6 at 12, 31-33. First, while the appellant expressed confusion regarding the distinct types of Federal service he has rendered, I find nothing in the record to dispute the agency's conclusion that the appellant was a CSRS Offset retiree with a period of dually covered service. Likewise, the appellant has not disputed the agency's contention that upon his retirement in March 2020, he was over 62 years of age and therefore eligible for Social Security benefits. Thus, I find the agency appropriately reduced his annuity as required by statute and regulation. *See* 5 U.S.C. § 8349; 5 C.F.R. § 831.1005.

Moreover, I find the appellant has failed to present preponderant evidence calling into doubt the agency's basic record with respect to the information it received from the SSA regarding the amount of his Social Security monthly benefit with his CSRS Offset service (\$1,864.90) and without that service (\$814.70). *See* HR; *see also* IAF, Tab 6 at 32. As such, I find the agency correctly computed the difference in those two amounts as \$1,050.20. *See* IAF, Tab 6 at 32; 5 C.F.R. § 831.1005(a). I further ascertain no error in the agency's computation of \$1,678.41 as the comparison amount required by the formula set

NOTICE TO APPELLANT

This initial decision will become final on April 18, 2022, 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

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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

**Additional material
from this filing is
available in the
Clerk's Office.**