

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

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LONDON, KY 40742-8311
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Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 01/13/2021. As a result of such hearing, it has been determined that the decision issued by the Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to your assigned Claims Examiner. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Federal Employees Program

PAUL H FELSER
FELSER LAW FIRM, P.C.
7393 HODGSON MEMORIAL DR STE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, March 30, 2021

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the Case No.*

The issues for determination are (1) whether the Office of Workers' Compensation properly found an overpayment of compensation of \$5019.83; (2) whether the claimant is without fault in the creation of the overpayment; and, if so, (3) whether recovery of the overpayment may be waived.

The claimant was employed as a _____ The claimant filed a timely
claim of traumatic injury, claiming an injury on _____ when her vehicle was rear
ended by a truck while she was delivering mail. The office accepted the claim for cervical
strain, right ankle sprain, right upper arm contusion, right shoulder adhesive capsulitis, and
right shoulder tendonitis. The office subsequently added Dysthymic disorder and began
providing monetary benefits beginning December 15, 2008.

By preliminary overpayment decision dated September 10, 2018 the office advised the claimant that she had been overpaid \$3415.08 because she received wage loss compensation from December 1, 2017 through August 18, 2018 while also receiving retirement benefits from the Social Security Administration. The office advised the claimant that she was with fault in the matter and also stated that they had begun FERS offset from her compensation effective August 19, 2018. By hearing decision dated May 28, 2019 the decision was remanded, noting discrepant information from SSA regarding the benefits the claimant received from them. The office was to obtain clarification from the SSA regarding the claimant's SSA benefits.

The SSA then provided different amounts on the benefits received when including FERS, indicating the claimant received \$1027.30 beginning in December 2017 and \$1056.00 beginning in December 2018.

By preliminary overpayment decision dated August 14, 2019 the office advised the claimant that she had been overpaid \$5350.01 because she received wage loss compensation from December 1, 2017 through August 17, 2019 while also receiving retirement benefits from the Social Security Administration. The office advised the claimant that she was without fault in the matter. In their calculated overpayment they noted the offset rate for her compensation was different than previously calculated.

The claimant disagreed with the preliminary decision and requested a pre-recoupment hearing before an OWCP representative.

By hearing decision dated March 31, 2020, the case was remanded for a clear decision with regard to the amount and period of the overpayment. The hearing representative indicated the office's decision and calculations were confusing as the office appeared to be saying the overpayment was only \$504.52 when accounting for the difference in the required offset. However, they still advised the claimant that the overpayment was \$5350.01. The office's overpayment decision was further confusing in that when arriving at \$504.52, the office used the wrong amounts for both the amount allegedly overpaid, indicating \$5350.41 and subtracted \$4845.89 based upon the difference in required offset when their calculations of the offset indicated the total was \$4845.49.

The office then received additional offset information from SSA indicating that the claimant began receiving \$1072.80 in December 2019.

By preliminary overpayment decision dated August 26, 2020 the office advised the claimant that she had been overpaid \$5019.83 because she received wage loss compensation from December 1, 2017 through July 18, 2020 while also receiving retirement benefits from the Social Security Administration. The office advised the claimant that she was without fault in the matter.

Hearing was held on January 13, 2021. The claimant was represented by Paul Felser. The claimant was not present.

At hearing, Mr. Felser presented argument that the overpayment was not correct in that the office had begun offset at the time of the first overpayment but continued to extend the period of the overpayment in subsequent overpayment decisions after remand. He further indicated there were discrepancies in which it appeared the office was transposing numbers, thus confusing the actual amount of the calculated overpayment.

A transcript was provided to the employer and the claimant. Both were afforded 20 days to respond to the transcript.

In addition, the case record was held open for 30 days in order to allow the claimant time to submit additional evidence.

Based upon a thorough review of the evidence of record, I find that the preliminary overpayment decision dated August 26, 2020 should be set aside for additional explanation of the office's calculations and a de novo decision.

In the present case, unfortunately I find that the office hasn't adequately explained the basis for the calculation of the overpayment. The office's decision indicates that the first offset of \$366.37 had remained the offset through August 17, 2020 with an increase to \$376.63 beginning in January of 2020. However, compensation history in the claim indicates that history only went to August 17, 2019. Review of the payment history in the data base

indicates the claimant was receiving net compensation of \$2722.87 through August 17, 2019 but then began receiving \$3099.50 in net compensation effective August 18, 2019 which would indicate the offset was reduced after the prior overpayment decision. I find that upon return of the case file, the office should review the claim carefully and then issue a de novo decision reflecting the correct periods and amount of the overpayment. The office should provide the claimant and her attorney with any worksheets or payment history used to calculate any overpayment when issuing the de novo decision.

Consistent with the above findings, the preliminary overpayment decision of the office dated August 26, 2020 is set aside and the claim returned for the action described above.

ISSUED
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs