

File Number:  
HR20-D-H

RECEIVED APR 04 2020

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

Date of Injury:  
Employee:

Dear \_\_\_\_\_

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

The review was completed or \_\_\_\_\_ As a result of such review, it has been determined that the decision issued by the District 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 the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELZER  
ESQ  
FELZER LAW FIRM, P.C.  
7393 HODGSON MEMORIAL DRIVE  
SUITE 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 31, 2020

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

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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. Examination  
of the written record having been completed in Washington D.C. Based on this review, the  
decision of the District Office is **VACATED** for the reason set below.

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The issues for determination are (1) whether an overpayment of \$5,350.01 has occurred in this case; (2) whether the claimant was with or without fault with regard to this overpayment; and (3) whether a waiver or compromise of the overpayment should be granted.

The claimant, born , was employed as a rural carrier by the

The claimant has an accepted injury claim and has been in receipt of partial disability since

By preliminary decision dated the Office advised the claimant that an overpayment of compensation in the amount of \$5450.01 had occurred based on her receipt of compensation for disability for the period of to and age related Social Security benefits without the required FERS offset.

The decision found the claimant was without fault in the creation of the overpayment decision due to the complexity of the issue.

The claimant requested an oral hearing before an OWCP representative. Accordingly the hearing was scheduled on At the time of the scheduled hearing, it was determined the overpayment amount was actually unclear based on the calculations set forth in the preliminary decision. The claimant's attorney questioned the actual overpayment amount and the calculations expressed in the decision.

It was determined that the hearing request would be converted to a review of the written based on the unclear calculations and findings in the preliminary decision of .

Based on my review of the file, the decision of the District Office dated should be set aside and the case remanded for a clear findings and calculation of the overpayment in accordance with FECA procedure.

Washington DC, March 31, 2020

The present decision is not only unclear it references applying the FERS offset for the period of \_\_\_\_\_ to \_\_\_\_\_ to the overpayment, but if the Office was offsetting the claimant's benefits that period would not be considered in the overpayment calculation.

Therefore the Office's decision must be set aside for a clear finding of the period of the overpayment and the amount of the overpayment. The decision concludes that the Office applied the offset of \$4845.49 to the overpayment amount and terminated the offset effective \_\_\_\_\_ from the periodic roll leaving an overpayment of \$504.52. Overall the decision is unclear on the amount and period of the overpayment.

I also note the deduction for the FERS offset beginning \_\_\_\_\_ was based on incorrect information provided the Social Security Administration (SSA). The SSA subsequently corrected the offset amount which requires clarification and consideration in the potential overpayment determination. The SSA provided a corrected information on form dated \_\_\_\_\_ per the Office's request.

The Employees' Compensation Appeals Board has previously held that when there were many discrepancies in the record with respect to the amount of compensation due claimant for her period of disability and the amount she actually received or was advised by the Office that she was entitled to receive; the decision set aside the Office's determination of an overpayment of compensation and remanded the case for further development.<sup>1</sup>

Upon return of the case file the office will need to provide a clear determination of the amount and period of the overpayment. If the Office was deducting an offset amount, this would not be included in the overpayment period. If the amount of the offset was incorrect the Office will need to provide a separate decision for the period in question.

Pursuant to 20 C.F.R. section 10.431 of the Code of Federal Regulations: "Before seeking to recover an overpayment or adjust benefits, [the office] will advise the beneficiary in writing that: (a) The overpayment exists; and the amount of the overpayment; (b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment; (c) He or she has the right to inspect and copy government records relating to the overpayment; and (d) He or she has the right to present evidence which challenges the fact or the amount of the overpayment..."

The ECAB has held it is necessary that OWCP make findings of fact including a clear explanation of how the fact and the amount of overpayment were determined.<sup>2</sup>

<sup>1</sup>*Gloria H. Kulik*, 40 ECAB (1989) [88-1613 issued February 28].

<sup>2</sup> See *O.R.*, 59 ECAB 432 (2008) (with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); *Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP procedures, an overpayment decision must contain a clearly written explanation indicating how an overpayment was calculated).

Consistent with the above findings the decision of the District Office dated is set aside and the file remanded to the District Office for execution of the above actions and a *de novo* decision.

Issued  
Washington, D.C.

Hearing Representative  
Branch of Hearings & Review  
For  
Director, Office of  
Workers' Compensation Programs