

File Number:
HR10-DrH -

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injur,
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 _____ 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 the Jacksonville Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSÉR, ESQ.
FELSÉR LAW FIRM, P.C.
QUEENSBOROUGH BANK BLDG
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, September 29, 2020

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
Employed by the Case No. Hearing was
held by telephone on in Washington, D.C.

The issues for determination are (1) whether an overpayment of \$26,906.87 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 food service worker by the
The claimant has an accepted work injury of .
The claim was allowed for a bilateral patella chondromalacia, bilateral knee osteoarthritis, and left medial meniscus tear.

The claimant was in receipt of compensation benefits for temporary total disability as a result of her accepted work injury.

The Office issued a preliminary decision on advising the claimant that an overpayment of compensation in the amount of \$26,906.87 had occurred as a result of a dual benefit being paid during the period of through . The decision explained the claimant was in receipt of Social Security benefits based in part on her federal service and no FERS offset was deducted from the FECA compensation benefits in accordance with FECA PM. The Office made a preliminary finding that the claimant was without fault in the creation of the overpayment due to the complexity of the issue.

The claimant requested a hearing on the issue of the overpayment and a waiver of the overpayment.

Accordingly, said hearing was scheduled and held on by telephone in Washington, D.C.

The claimant was not present at the hearing but was represented by attorney Paul Felser. He requested the record be held open for 30 days to allow for the submission of an overpayment recovery questionnaire. He explained the process might take a little longer and he would advise if additional time was needed.

Mr. Felser discussed the decision finding that the claimant was without fault. He argued that expecting repayment was unfair as the monies had been spent on living expenses. He discussed detrimental reliance and noted the claimant could have made other choices in her

spending had she known her compensation was incorrect. He explained it would be impossible for the claimant to repay the debt based on her current income. He requested waiver of the overpayment and if not granted the repayment be fair and equitable based on a reduction of the debt.

Mr. Felser also argued the decision was hard to follow and contained little supporting documentation. He questioned the calculation of the debt and an explanation of the findings. He argued it was impossible to determine the correct amount of the debt based on the decision findings and he requested the amount and period of the debt be verified.

I explained the criteria necessary to establish financial hardship and requested the supporting financial documentation.

I agreed that the record would be held open for thirty days to afford the claimant the time to complete the overpayment recovery questionnaire and to provide the requested financial documentation.

The claimant's attorney requested additional time to provide the evidence until by letter dated . The record remained open through the requested date. To date the evidence has not been received.

A copy of the transcript was sent to the employing agency for review and comment. No comments were received.

Based on the hearing argument and written evidence of record, I find the preliminary decision should be vacated and the case returned for a detailed finding and full explanation of the overpayment calculations.

Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of SSA benefits based on age or death that are attributable to federal service and that, if an employee receives SSA benefits based on federal service, his or her compensation benefits shall be reduced by the amount of SSA benefits attributable to his or her federal service.¹

OWCP's procedures provide that, while SSA benefits are payable concurrently with FECA benefits, the following restrictions apply. In disability cases, FECA benefits will be reduced by SSA benefits paid on the basis of age and attributable to the employee's federal service.² The offset of FECA benefits by SSA benefits attributable to employment under FERS is calculated as follows: where a claimant has received SSA benefits, OWCP will obtain information from SSA on the amount of the claimant's benefits beginning with the date of eligibility to FECA benefits. SSA will provide the actual amount of SSA benefits received by the claimant/beneficiary. SSA will also provide a hypothetical SSA benefit computed without

¹ 5 USC 8116(d); *G.B.*, Dkt. No. 11-1568 (iss'd February 15, 2012); see *Janet K. George (Angelos George)* 54 ECAB 201 (2002).

² Federal (FECA) Procedure Manual, Part 2—Claims, Dual Benefits, Chapter 2.100.4(3)(January 1997); Chapter 2.100.11(a)(b)(February 1995); See also *R.C.*, Dkt. No. 09-2131 (issued April 2, 2010).

the FERS covered earnings. OWCP will then deduct the hypothetical benefit from the actual benefit to determine the amount of benefits which are attributable to federal service and that amount will be deducted from the FECA benefit to obtain the amount of compensation payable.³

In the present case, the Office declared an overpayment in the amount of \$26,906.87, in compensation benefits for the period _____ to _____

The Office advised the claimant that an overpayment had been identified stating that SSA had been contacted about benefits that had been paid and explained that she had been found without fault due to the complexity of the benefits administration, however, the Office provided minimal explanation regarding the basis of the overpayment, particularly that that the receipt of both benefits concurrently was prohibited and the receipt of both benefits concurrently resulted in an overpayment of FECA benefits when an offset or reduction of her FECA benefits was not made.

The period identified is also not clear as the SSA information received on _____ reflects that says FERS began _____. However, the overpayment period calculated began with _____. In addition, the SSA letter dated _____ indicates full retirement began _____, yet again, the overpayment calculation begins with the _____ date. I find the issue requires an explanation of the dates utilized in the calculation of the overpayment period.

The record is clear that an overpayment of benefits exists due to a lack of an offset of OWCP benefits while the claimant was in receipt of her SSA concurrently, however, a thorough explanation of the overpayment calculations is necessary. It is important that the Office fully explain the overpayment calculations for each period of FERS offset for the claimant to have a proper understanding of how the entire overpayment was calculated.

The Office provided the offset calculation table but offered the claimant no explanation of the table, from where the information was taken or how the information was used to calculate the overpayment. While the Office may use a worksheet demonstrating the calculations of the overpayment, the Office must still provide a full explanation of the various columns and monetary figures within each. Worksheet calculations that are used as the basis for the overpayment should be placed in the case and attached (and explained) with any overpayment decision.⁴

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..."

³ FECA Bulletin 97-09 (iss'd February 3, 1997); See also *R.C.*, *id.*

⁴ Procedure Manual, Part 6 – Debt Management, Chapter 6-0100, *Introduction* 3(b).

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.⁵

Upon return of the case record, the Office should provide the claimant with a new decision explaining the basis of the declared overpayment, how the overpayment was calculated, what period(s) the deduction(s) represent, and detail the overpayment calculations in a manner that is understandable for a person unfamiliar with the Office's requirements or information provided.

Accordingly, the District Office's preliminary overpayment finding is set aside and the case is **remanded** for further development of the evidence and a *de novo* decision.

Issued
Washington, D.C.

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

⁵ 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).