

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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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 _____ 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
Branch of Hearings and Review

PAUL H FELSER
FELSER LAW FIRM, PC
QUEENSBORO BANK BUILDING
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, December 22, 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
Claimant; Employed by the
Case No. A telephone hearing was held on

The issues for determination in this case are: (1) whether an overpayment of \$6,012.69 has occurred in this case; and (2) whether the claimant is without fault with regard to the creation of such overpayment, and (3) whether and in what manner the overpayment should be recovered.

, date of birth , is employed by the
as a On she filed a Form
CA-2, Notice of Occupational Disease, indicating a claim was being made for her having developed medical conditions involving her upper extremities which she felt to be causally related to factors of her Federal employment. The claim was accepted for bilateral epicondylitis, right carpal tunnel syndrome, pain disorder associated with psychological factors, and compensation provided.

the Office made a preliminary determination that the claimant was ~~WITHOUT FAULT WITH~~ regard to an overpayment of \$6,012.69, which occurred during the period from , a period during which the claimant received benefits under both the Social Security Administration (hereafter SSA) due to age/retirement at the same time that she received compensation benefits under the Federal Employees' Compensation Act (hereafter FECA) benefits without any offset for the receipt of benefits under Social Security Administration. The Office determined that the claimant was a Federal Employees Retirement System (hereafter FERS) employee, and SSA benefits are considered part of a FERS retirement. The portion of the SSA benefits attributable to the FERS employment required an adjustment in FECA benefits.

By letter date the claimant, through her representative, Paul H. Felser, wrote requesting an oral hearing with a representative of the Office of Workers' Compensation Programs.

A telephone hearing was held on . Representing the claimant at hearing was Paul H. Felser. At hearing the claimant's representative indicated he was not sure if the amount of the overpayment was correct, agreed the claimant was without fault, and requested 30 days within which to submit additional financial information regarding the claimant's monthly income and expenses.

On the Office received a copy of an OWCP-20, Overpayment Recovery Questionnaire, dated , along with supportive documentation.

Washington DC, December 22, 2020

A copy of the transcript was submitted to the employing agency for review and comment. No response has been received in the allotted time frame.

After a thorough review of the evidence and testimony it is the determination of this reviewer that the district office decision of _____ must be VACATED.

In the case at hand it is the opinion of this reviewer that the evidence of record is insufficient to establish whether an overpayment of compensation has actually occurred, or the period and amount of the overpayment. The case file fails to contain sufficient employment information to determine the nature of the retirement plan the claimant was employed under. (No copies of SF-50's CA-8's, etc. addressing the retirement system the claimant is employed under and/or the period(s) of such employment.

On REMAND, the Office is directed to obtain information from the Office of Personnel Management (OPM) (SF-50) and the Social Security Administration (SSA) regarding what retirement system the claimant was employed under and the period(s) of such enrollment. (It is noted that the claimant has completed a CA-1032, dated _____ indicating she was not receiving SSA benefits as part of an annuity for Federal service. It is also noted that the case file contains a statement from the SSA dated _____, reflecting the claimant's SSA rate with FERS and without FERS.) Such information is necessary to render a proper determination with regard to whether an overpayment has occurred in the case and the proper amount of the overpayment. (See D.B., Docket No. 16-1224, issued _____)

Upon implementation of the aforesaid action the district office is directed to take appropriate action to be followed by issuance of a de novo decision.

ISSUED:
WASHINGTON, D.C.

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