

File Number:  
HR11-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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the Office has been vacated and returned to the office for further action as explained in the attached Remand Order.

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,

Electronically Signed  
Federal Employees Program

PAUL H FELSER ESQ.  
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, November 27, 2020

### DECISION OF THE HEARING REPRESENTATIVE

Case No.

The issues for determination are whether the claimant was overpaid compensation in the amount of \_\_\_\_\_ for the period \_\_\_\_\_ and whether the overpayment should be waived.

The claimant was employed by the [redacted] as a practical nurse. It was accepted that she sustained a traumatic injury on [redacted] when she was trying to sit down, the chair moved and she fell. Her claim was accepted for lumbar sprain, sprain of the left medial collateral ligament, chondromalacia patella, left, general anxiety and major depression.

Compensation for wage loss for total disability was paid to the claimant on the periodic roll.

On [redacted] a preliminary finding that the claimant was overpaid compensation in the amount of [redacted] for the period [redacted] through [redacted] was issued because the amount of her age based Social Security Administration (SSA) retirement benefits attributable to employment covered by the Federal Employees' Retirement System (FERS) was not offset. The receipt of SSA age based retirement benefits attributable to FERS covered employment concurrently with compensation for wage loss is a prohibited dual benefit.

On [REDACTED] the Office received notification from the SSA of the amounts of the claimant's age based SSA retirement benefits with and without FERS covered employment included. Only the amount of age based SSA retirement benefits attributable to FERS covered employment is subject to offset.

The preliminary finding included a chart to show how the overpayment was calculated. However some of the amounts on the chart were illegible and the columns in the chart were not adequately explained. A footnote was included with the chart.

The claimant was found without fault in the creation of the overpayment because due to the complexity of benefits administration she could not reasonably have been aware she was overpaid.

Washington DC, November 27, 2020

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>1</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>2</sup> A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>3</sup>

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.<sup>4</sup> 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 as to 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. It will also provide a hypothetical SSA benefit computed without 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 FECA benefits to obtain the amount of compensation payable.<sup>5</sup>

A pre-recoupment hearing was requested.

The case is not in posture for a hearing. It must be clearly shown how the overpayment was calculated. Some of the amounts on the chart showing how the overpayment was calculated are illegible and the single footnote does not make it clear to the claimant how the overpayment was calculated. If a footnote is to be used to explain how the overpayment was calculated a footnote should be inserted in each column explaining what that column is. That is how the footnote used by the claimant was intended to be used with the chart.

The preliminary finding that the claimant was overpaid dated \_\_\_\_\_ is vacated. On remand a legible copy of the chart showing how the overpayment was calculated should be included in the preliminary finding and the appropriate footnotes explaining how the overpayment was calculated should be included in each column or a narrative explanation of how the overpayment was calculated should be included.

<sup>1</sup> 20 C.F.R. § 10.421(d); see T.B., Docket No. 18-1449 (issued March 19, 2019)

<sup>2</sup> FECA Bulletin No. 97-09 (February 3, 1997); see also N.B., Docket No. 18-0795 (issued January 4, 2019)

<sup>3</sup> 5 U.S.C. § 8116(d)(2); see L.W., Docket No. 19-0787 (issued October 23, 2019)

<sup>4</sup> R.C., Docket Number 09-2131 (issued April 2, 2010)

<sup>5</sup> R.B. Docket Number 15-0192 (issued August 6, 2015)

The case is returned to the assigned Claims Examiner for issuance of a new preliminary finding as specified above.

Issued:  
Washington, D.C.

Electronically Signed  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

Washington DC, November 27, 2020