

File Number:
HR11-D-H

U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO BOX 34090
SAN ANTONIO, TX 78265
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 District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

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
OWCP/DFEC, PO BOX 34090
SAN ANTONIO, TX 78265

Sincerely,

Division of Federal Employees' Compensation

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, May 08, 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.

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the
District Office's decision is set aside for the reasons set forth below.

The issues for determination are: 1) whether an overpayment in the amount of \$4,766.60, for the
period 2) whether the claimant was without fault in the creation of
the overpayment; and 3) whether a waiver or compromise of the overpayment should be granted.

The District Office accepted that the claimant, born was injured in the
performance of her duties on The Office accepted the claim
for upper back strain, major depression (recurrent) and myalgia.

In a statement, received on , the Social Security
Administration (SSA) advised the Office that the claimant was in receipt of SSA benefits effective
and outlined the claimant's SSA's entitlement rate based on FERS contribution (with
FERS) and her entitlement excluding her FERS contributions (without FERS) beginning
with increases in her SSA benefit as of and The
Office corrected the claimant's continuing compensation benefits to reflect the SSA offset effective

In a preliminary determination, the Office explained that an overpayment of
compensation in the amount of \$4,766.60, existed for the period to
because the claimant's compensation was not adjusted to reflect the offset for her receipt of SSA
benefits. The Office found the claimant without fault in creating the overpayment. The claimant
disagreed with the preliminary overpayment determination regarding the overpayment and requested
a hearing with an OWCP representative on the issues of the overpayment and waiver.

I find that further development of the evidence is necessary.

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.²

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

¹ Fiscal record run date: January 24, 2020. Other than the preliminary overpayment determination, the record
does not reflect that the Office provided the claimant with a letter explaining the reduction in her benefits.

² 5 USC 8116(d); G.B. Dkt. No. 11-1568 (issued February 12, 20-12); see *Janet K. George (Angelos George)*
54 ECAB 201 (2002).

paid on the basis of age and attributable to the employee's federal service.³ The offset of FECA benefits by SSA benefits attributable to employment under the Federal Employees Retirement System (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 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.⁴

In the present case, the Office declared an overpayment of compensation in the amount of \$4,766.60, for the period _____ to _____. The Office advised the claimant that an overpayment had been identified because her OWCP benefits were not reduced by the FERS/FECA amount. The Office explained that it had received the SSA's _____ statement, which indicated that the claimant had received SSA as part of an annuity under FERS effective _____ during a period that she was receiving disability/wage loss benefits. The Office stated that effective _____, the claimant's compensation were adjusted to include the FERS offset. The Office stated that the claimant was overpaid for the period _____ to _____ because she had received SSA benefits without an offset of her disability/wage loss compensation for the identified period. The Office provided the claimant with a FERS OFFSET CALCULATION worksheet and explained that she was found without fault in the creation of the overpayment stating that she would not have been aware nor could she have reasonably been expected to know that she had been paid incorrectly.

While the Office relied on the SSA's _____ notification of the claimant's SSA benefit for which it declared an overpayment of compensation benefits, the available record does not reflect any other personnel records (Form SF-50) or Forms CA-7, reflecting the claimant's retirement option. The Office should have inquired further regarding the accuracy of this information and the applicable retirement system by contacting the Office of Personnel Management.⁵

It is also noted that the Office received a _____ statement from SSA advising that the claimant was Office receipt of SSA benefits effective _____, and outlining her SSA entitlement rate based on FERS contribution (with FERS) and her entitlement excluding her FERS contributions (without FERS) beginning _____. The _____ FERS offset statement (received on _____, differs significantly from the figures provided on the SSA's _____ statement, yet the Office used the _____ figures without querying SSA on the difference between the _____ and _____ statements and confirmation of which figures are accurate.

³ 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).

⁴ FECA Bulletin 97-09 (issued February 3, 1997); see also *R.C. id.*

⁵ In the case of *J.M., Docket No. 15-1604, issued May 23, 2016*, the Employees' Compensation Appeals Board (ECAB) found that the record did not contain evidence to support a finding that the claimant was in receipt of FERS benefits. The Board noted that OWCP premised its finding of an overpayment solely on the SSA's July 29, 2014 letter regarding the claimant's age-related retirement benefits, however, found that the July 2014 letter alone did not establish that the claimant was in receipt of, or eligible for, FERS benefits. It was explained that the OWCP did not cite any other documentation to confirm that the claimant was in receipt of dual benefits from the SSA and from OWCP, and therefore, it was determined that OWCP failed to establish the fact of the overpayment.

The Office provided the offset calculation sheet but offered no explanation of the information or how the information was used to calculate the overpayment. Worksheet calculations that are used as the basis for the overpayment should be placed in the case and attached to *(and explained)* any overpayment decision.⁶ The preliminary overpayment determination included a reference to the FERS offset chart, however, any future FERS offset chart should include an explanation of what the columns represent. OWCP is required by statute and regulations to make findings of fact.⁷ OWCP procedure specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."⁸ If it is determined that a offset of compensation is applicable in this case, the Office should ensure that the claimant is provided with a clear explanation of the overpayment explaining the difference between what she was paid and what she should have been paid in calculating the overpayment.

Prior to further consideration of the declared overpayment, the Office must request clarification from the OPM and SSA, as indicated. Upon receipt of the requested information, the Office should provide the claimant with a new preliminary determination, *if applicable*, regarding any declared overpayment explaining the FERS offset chart and the overpayment calculations.

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 and Review
for
Director, Office of
Workers' Compensation Programs

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

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, Disallowances, Chapter 2.1400.4 (July 1997).

⁸ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 CFR. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."