

File Number:
HR11-D-H

RECEIVED OCT 05 2015

U.S. DEPARTMENT OF LABOR

SEP 30 2015

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

Sincerely,

Hearing Representative

PAUL H FELSER
PO BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

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
number

*Merit Consideration of the case file was completed on Based on
the review, the preliminary overpayment decision of the district office dated
is set aside for the reasons set forth below.*

The issue for determination is 1) whether the claimant was overpaid \$1,125.43 for the period of to , 2) whether the claimant was with or without fault with regard to the overpayment which has occurred, and 3) whether, and in what manner the overpayment should be recovered.

date of birth is employed with the
She filed Form CA-1 for a timely notice of a Traumatic Injury that occurred on . The claim is approved for displacement of lumbar intervertebral disc without myelopathy, other congenital anomaly of spine, displacement of cervical intervertebral disc without myelopathy, lumbar intervertebral disc disorder without myelopathy, and chronic pain syndrome.

The claimant has been in receipt of wage loss compensation on the automatic 28-day periodic roll cycle for years. She was being compensated for total disability based upon a recurrent pay rate date of . Payment was made at the 3/4 compensation rate with deductions taken for health benefit code 455 (a family plan), and optional life insurance code M1. There was no deduction for basic life insurance as the claimant was over the age of 65. The annual salary for life insurance was reflected as \$24,312.

On the Office received a CA-1032 form that had been completed by on . When asked whether she was married, she wrote "no." The Office subsequently received a medical report dated which indicated that the claimant's husband had passed away. By letter dated the Office wrote to the claimant requesting that she advise of the date of her husband's passing. She was also advised that her compensation would be adjusted from the 3/4 compensation rate to the 2/3 compensation rate since she no

longer had an eligible dependent living with her. The letter explained that a determination would be made as to whether an overpayment existed due to the change in dependency status.

In a response received on [REDACTED], [REDACTED] advised that her husband had passed away on [REDACTED]. Upon receipt of this information, the Office adjusted the 28-day periodic roll plate effective [REDACTED] to reflect that compensation should be paid at the 2/3 rate. Additionally, due to the change in dependency status the claimant's health benefit code was changed from a family plan (code 455) to a single plan (code 454).

At the same time that the Office corrected the claimant's compensation rate and health benefit code they also adjusted the claimant's annual salary for life insurance based upon a document that had been received from the Office of Personnel Management (OPM) dated [REDACTED]. This form indicated that the claimant's final salary rate upon which Federal Employee's Group life insurance is based should be \$36,916.25. This form also indicated that the claimant had elected a 50% reduction for post-retirement basic life insurance (PRBLI). The annuity commencing date was listed as [REDACTED]. Based upon this document, the Office adjusted the annual life insurance salary in the 28-day periodic roll cycle effective [REDACTED]. It was changed from \$24,312.00 to \$36,916.25. As of the date of this decision, no changes have been made in regards to the 50% reduction for post-retirement basic life insurance.

On [REDACTED] the District Office issued a Preliminary Overpayment decision finding the claimant responsible for an overpayment which occurred for the period of [REDACTED] through [REDACTED] in the amount of \$1,125.43. The Office explained that [REDACTED] continued to receive wage loss benefits at the 3/4 compensation rate from [REDACTED] through [REDACTED] however she should have been paid at the 2/3 compensation rate for this period as her husband had passed away and she no longer had an eligible dependent. She was found at fault in the creation of the overpayment as she was aware or should have reasonably been aware that there was no entitlement to compensation at the augmented rate when there was no eligible dependent. In support of the fault finding, the Office pointed to the CA-1032 forms which advised Ms. Powell of her responsibility to report any change in the status of any claimed dependents. The claimant's husband passed away on [REDACTED] however the Office did not receive notification of his passing until [REDACTED].

The claimant disagreed with this decision and requested a pre-recoupment hearing. In accordance with this request, I have conducted an initial review of the file and find that the case is not in posture for a hearing at this time.

Based on my review of the file, the decision of the District Office dated [REDACTED] should be *SET ASIDE* and *REMANDED*.

The Office found the claimant responsible for an overpayment in the amount of \$1,125.43 for the period of _____ to _____. In the decision, the Office indicated that the overpayment occurred due to a change in dependency status. Specifically, _____ was reportedly paid at the 3/4 compensation rate for this period however she should have been paid at the 2/3 rate. On review, I find the period and amount of the overpayment to be incorrect. Specifically, the Office improperly offset the amount of the overpayment by an underpayment that occurred due to the claimant's change in health benefits. The Office had been making deductions for health benefit code 455 for a family plan however this was changed to a less expensive single plan following the death of _____ husband. Therefore, this would result in an underpayment. Additionally, it appears that the Office combined the dependency issue with the fact that payments had been made using an incorrect annual salary for life insurance. This was improper as they involve two separate overpayments and likely two different fault findings. The claimant was found *with* fault in the creation of the overpayment which resulted from the change in her dependency status. However, she would likely be found *without* fault in the creation of the overpayment which resulted from the use of an improper life insurance salary.¹ Therefore, these issues must be considered separately and two preliminary overpayment decisions must be issued.

In this case, the claimant's husband passed away on _____. Therefore, _____ would no longer be entitled to the augmented 3/4 compensation rate beginning _____. According to the electronic record, the Office made this correction to the automatic 28-day periodic roll plate and they also adjusted the health benefit code to reflect a single plan effective _____. Despite this, the Office still included the period of _____ to _____ in the overpayment calculation. It appears that this period was included because the Office corrected the annual life insurance salary to reflect \$36,916.25 per the document from OPM dated _____.

The record reflects that they had already corrected the automatic 28-day periodic roll plate effective _____ to document this change however the life insurance salary had not been fixed prior to that point. Although it was not referenced anywhere in the preliminary decision, it appears that this period was included as part of the overpayment solely because of the change in annual life insurance salary.

Additionally, when the Office calculated the overpayment for the dependency issue, they ran a worksheet to show what the claimant should have received however they also included the corrected life insurance salary in their calculations for the entire period. Again, this was improper. Any overpayment which results from the use of an improper life insurance salary should be calculated and considered separately from the overpayment resulting from a change in dependency. Again, these are two separate issues that may have different fault findings. If the claimant is found to be with fault in the creation of the overpayment which resulted from a change in dependency, then she would not be entitled to a consideration of a waiver. However, if an overpayment

¹ Part 6-0200-5 (c) of the FECA *Procedure Manual* states that one of the situations where an individual can be found without fault in the creation of an overpayment is when it resulted from the under-deduction of health benefits or life insurance premiums.

resulted because the Office was using an incorrect life insurance salary and/or failed to make deductions for PRBLI, the claimant would likely be found without fault in the creation of the debt and would therefore be entitled to consideration of a waiver. Therefore, it is crucial that these overpayments be considered separately.

Lastly, in the Office's calculations of what the claimant should have received, they adjusted the health benefit code to reflect code 454 which is for a less costly single plan. The Office had previously made deductions for a family plan (code 455) from the date of the claimant's husband's death through December 13, 2014.² This change resulted in the claimant being underpaid because the office had previously made deductions for a plan with higher premiums. The Office factored this into their overpayment calculation however it was in error to offset the amount of the overpayment with the over collection of health benefit premiums. Although such an offset appears administratively straightforward, it circumvents established legal procedures and protections. Extensive due process rights attach to any attempt by the Office to recoup benefits already paid, even if paid in error.³ The ECAB has held that OWCP should not attempt to offset underpayments of compensation in determining the amount of an overpayment as they are separate issues.⁴

Thus, the case is remanded back to the Office for the issuance of separate preliminary overpayment decisions and the calculation of an underpayment with regard to the change in health benefit premiums. The first decision should pertain strictly to the overpayment which resulted from the change in dependency status. Therefore, the Office should calculate the overpayment for the period of _____ through _____ based upon the 2/3 compensation rate.⁵

The Office should then calculate an overpayment based upon the annual life insurance salary as outlined by OPM in the document dated _____. It is noted that the Office made this correction to the periodic roll plate effective _____ however OPM indicated that this was effective as of _____. Therefore, the Office must go back through all periods of wage loss paid and calculate what the overpayment

² The health benefit code was changed to reflect the single plan, code 454, effective _____

³ *Robert L. Curry*, 54 ECAB 675, 677 (2003).

⁴ (*R. L. C.*, 54 ECAB 675 (2003)).

⁵ A worksheet was run to show what the claimant should have received from _____ through _____ at the 2/3 compensation rate. The worksheet was run using calendar days and a date of recurrence pay rate of _____ at a weekly rate of \$584.43. Deductions were made for health benefit code 455 and optional life insurance code M1. Basic life insurance is free as the claimant is over 65 years of age. Based upon this, the claimant *should have* received a net payment of \$19,407.54. From _____ to _____ the claimant *actually* received \$22,579.86 net. This was calculated as follows: The claimant received a 28-day periodic roll check in the net amount of \$2,299.04 for the period of _____ to _____. The overpayment began _____ therefore she was overpaid for 23 days of this period. \$2,299.04 divided by 28 days multiplied by 23 days overpaid totals \$1,888.50. The claimant subsequently received 9 checks on the periodic roll from _____ through _____ in the net amount of \$2,299.04 each for a total of \$20,691.36. This figure added to \$1,888.50 totals \$22,579.86. Therefore, the claimant received \$22,579.86 net from _____ to _____ however she should have received \$19,407.54 for this period based upon the 2/3 compensation rate. This is a difference of \$3,172.32.

should be from the date the annual life insurance salary became effective through . Additionally, it is important to note that the document from OPM also indicated that elected post-retirement basic life insurance at a 50% reduction. There is a cost associated with this therefore the Office should also consider this in their overpayment calculations.⁶

Lastly, the Office should calculate any underpayment which occurred from the change in deductions for health benefits.⁷

For the reasons outlined above, I find that separate preliminary findings should be issued. Chapter 6-0200 (4) of the FECA Procedure Manual states, it is also critical that all overpayments be handled separately, especially in relation to the fault finding. While on occasion there may be more than one overpayment identified on a claim and it may seem less cumbersome to combine the two overpayments in order to quote one debt figure, this should not be done. Rather, the OE should consider the overpayments separately, because each overpayment situation must be considered on its own merit, in terms of fault finding.

Additionally, as noted above, the overpayment for the dependency issue will likely be higher than the figure previously determined. Also, the overpayment for the change in the annual life insurance salary and 50% reduction for post-retirement basic life insurance will be significantly higher.

Where a pre-recoupment hearing is requested based upon the District Office's preliminary finding, if, upon careful consideration of the facts, the Hearing Representative determines the amount of the debt is significantly larger than that outlined in the preliminary finding, "the case should be returned to the District Office for a new preliminary decision, which will then give the claimant full rights concerning the increased debt amount."⁸

For the reasons outlined above, the preliminary overpayment determination dated is hereby **remanded**, and returned to the District Office for actions consistent with this decision. Specifically, the Office is instructed to issue separate preliminary overpayment decisions for the change in the claimant's dependency status and for the changes to her life insurance salary and post-retirement basic life insurance reduction, per the OPM document dated . Additionally, the Office must

⁶ The Office should obtain a compensation history outlining wages the claimant received beginning (the date the annual life insurance salary and post-retirement benefit life insurance reduction of 50% became effective per the document from OPM dated). The Office should then calculate what the claimant received and what she should have received. As noted previously, the annual life insurance salary was corrected as of however no deductions for PRBLI have been made as of the date of this decision).

⁷ For the period of to the Office deducted \$4,584.25 for health benefit code 455 however deductions for code 454 should have been made for this period in the amount of \$1,895.93. This is a difference of \$2,688.32.

⁸ See FECA Procedure Manual, 6-0200.4(c).

address the underpayment which resulted from the change in health benefit plans. The case is returned for completion of the above noted actions.

DATED: SEP 30 2015

WASHINGTON, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs