

File Number:  
HR11-D-H

RECEIVED JUN 02 2018

U.S. DEPARTMENT OF LABOR

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,

[Electronically Signed]  
Justine Jung  
Hearing Representative

PAUL H. FELSER, ESQ  
FELSER LAW FIRM, PC  
7393 HODGSON MEMORIAL DR., 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, May 29, 2018

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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 in Washington, D.C. Based on this review, the decision of the District Office dated \_\_\_\_\_ is set aside for the reasons set forth below.

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The issues are whether the claimant received an overpayment of compensation in the amount of \$19,675.26 for the period \_\_\_\_\_ to \_\_\_\_\_ and whether she was with or without fault in the creation of the overpayment.

The claimant, born \_\_\_\_\_ was employed as a licensed practical nurse by the \_\_\_\_\_ in \_\_\_\_\_. The Office initially accepted that the claimant sustained lumbar strain while transferring a patient from a geriatric chair to a bed on \_\_\_\_\_. It later expanded the claim to include herniated lumbar disc and post-laminectomy syndrome, thoracic or lumbosacral neuritis or radiculitis, anxiety state, unspecified, and depressive disorder. The claimant underwent laminectomy and discectomy at L4-5 and foraminotomy at L5-S1 on \_\_\_\_\_ and laminotomy L4 right with removal of recurrent HNP L4-5 right on \_\_\_\_\_.

The claimant lost time from work intermittently following her injury and retired on disability effective \_\_\_\_\_.

On \_\_\_\_\_, the Office awarded the claimant a schedule award for 8% impairment of each leg for a total of 16%. The award covered the period \_\_\_\_\_ to \_\_\_\_\_ for 46.08 weeks.

The claimant subsequently filed Form CA-7s claiming total wage loss compensation from \_\_\_\_\_ to \_\_\_\_\_ and from \_\_\_\_\_ and continuing.

On \_\_\_\_\_ and \_\_\_\_\_, the Office issued election letters to the claimant advising her that she was not entitled to concurrently receive both FECA wage loss benefits and OPM retirement benefits and she must elect which benefit to receive. The claimant was also advised that "FECA benefits will be reduced by the Social Security Act benefits paid on the basis of age and attributable to your federal service".

The claimant elected FECA benefits and received wage loss compensation from [redacted] to [redacted] to [redacted] and effective [redacted]. She was placed on the periodic rolls effective [redacted].

The claimant reported on Form CA-1032s dated from [redacted] through [redacted] and from [redacted] through [redacted] that she was in receipt of the SSA benefits as part of an annuity for federal service. However, on Form CA-1032 dated [redacted] the claimant responded "No" to the question of whether she received benefits from the SSA as part of an annuity for federal service.

On [redacted] the Office requested that the SSA provide information regarding the claimant's retirement benefits based upon age and federal service. On [redacted] the SSA provided the SSA rates with FERS offset and without FERS offset from [redacted] to [redacted] as follows:

\$1,008.30/\$693.20.00;	-- \$1,025.40/\$704.90;	--
\$1,040.70/\$715.40;	-- \$1,058.30/\$727.50;	--
\$1,058.30/\$727.50;	-- \$1,061.40/\$772.20.	

Effective [redacted] the Office began to offset the claimant's FECA benefits by the amount of her SSA benefits attributable to her federal employment under FERS.

On [redacted], the Office issued a preliminary finding that an overpayment of \$19,675.26 occurred for the period [redacted] to [redacted] because the claimant received FECA benefits that were not reduced by the FERS portion of her SSA retirement benefits. The Office found that the claimant was without fault in creating the overpayment because she was not aware or could reasonably have been expected to know that OWCP had paid compensation incorrectly. It noted that since the claimant correctly reported receiving the SSA benefits on Form CA-1032s dated [redacted] through [redacted] she would not have been expected to know that she was accruing an overpayment. The Office calculated the overpayment using an excel spreadsheet which subtracted the SSA rate without FERS from the SSA rate with FERS to get the monthly FERS offset amount, which was then converted to the 28-day offset amount. Based on the number of days in each corresponding period, it calculated overpayment amounts for six different periods covering from [redacted] to [redacted] for a total of \$19,675.26.

In a letter dated [redacted] the claimant, through her attorney, requested a pre-recoupment hearing.

Based upon a review of the evidence of record, I find that this case is not in posture for a hearing at this time.

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>1</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 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 FECA benefit to obtain the amount of compensation payable.<sup>2</sup>

A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (2) Failed to provide information which he or she knew or should have known to be material; or (3) Accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).<sup>3</sup> Whether or not the Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>4</sup>

I find that the Office correctly determined that the claimant was overpaid in the amount of \$19,675.26 from \_\_\_\_\_ to \_\_\_\_\_ because she was paid dual compensation under FECA and SSA without an appropriate offset. However, I find that the preliminary overpayment decision should be set aside with respect to a finding of fault. The Office found that the claimant was without fault in the creation of the overpayment because she was not aware or could reasonably have been expected to know that OWCP had paid compensation incorrectly. It noted that since the claimant correctly reported receiving the SSA benefits on Form CA-1032s dated \_\_\_\_\_ through \_\_\_\_\_ she would not have been expected to know that she was accruing an overpayment. However, the record indicates the claimant was put on notice by letters dated \_\_\_\_\_ and \_\_\_\_\_ that her compensation would be reduced by the SSA benefits paid on the basis of age and attributable to her federal service. In addition, the claimant did not report receiving the SSA benefits as part of an annuity for federal service on Form CA-1032 dated \_\_\_\_\_. Therefore, the case will be remanded for a proper analysis on the issue of fault.

Accordingly, the preliminary determination issued by the District Office dated \_\_\_\_\_ is set aside and *remanded* for further action consistent with this decision.

<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(e); see also *R.C.*, Docket No. 09-2131 (issued April 2, 2010).

<sup>2</sup> FECA Bulletin 97-09; see *R.C.*, *id.*

<sup>3</sup> 20 C.F.R. § 10.433(a).

<sup>4</sup> *Id.* at § 10.433(b).

Issued:  
Washington, D.C.

Electronically Signed

Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

Washington DC, May 29, 2018