

File Number:  
HR13-D-H

RECEIVED FEB 25 2019

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 was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

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

Division of Federal Employees' Compensation

PAUL H FELSER  
FELSER LAW FIRM, P.C.  
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, February 21, 2019

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 No.

*Merit consideration of the case file was completed in Washington, D.C. Based on this review,  
the decision of the District Office dated December 04, 2018 is reversed for the reasons set forth  
below.*

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The issues for determination are 1) whether an overpayment in the amount of \$13,028.93 has occurred for period November 01, 2016 through November 10, 2018, 2) whether the claimant was with or without fault with regard to the overpayment, and 3) whether a waiver or compromise of the overpayment should be granted if found to be without fault.

was employed as a by the The Office accepted that he sustained a traumatic injury on January 17, 2017 when he stood up from his chair and felt a heavy pull in his lower back and right hip. The claim was accepted for Aggravation of other intervertebral disc; displacement, lumbar region (L5); Aggravation of radiculopathy, lumbar region (L5); aggravation of sacroiliitis. The claimant was receiving wage loss compensation on the periodic for total disability.

On December 04, 2018, the District Office issued a preliminary decision that the claimant was overpaid wage loss compensation in the amount of \$13,028.93 for period November 01, 2016 through November 18, 2018 because he was receiving compensation benefits under the Federal Employees' Compensation Act (FECA) for temporary total disability related to his work injury. He turned 68 years old in September 2016 and started receiving Social Security benefits (SSA) in November 2016. During the period of November 2016 thru November 10, 2018 he received FECA and SSA benefits concurrently. The Office did not adjust his compensation payment to include the Federal Employees' Retirement System (FERS) offset until November 11, 2018. Therefore, for the period of November 01, 2016 through November 10, 2018 he had an overpayment.

The overpayment was determined by taking each period beginning November 01, 2016 to November 10, 2018; identifying the number of days in the period; the 28 Day FERS Offset and the FERS Offset deduction. They totaled the FERS Offset deduction to equal \$13,028.93.

The office made a preliminary finding that the claimant was without fault in the creation of the overpayment because he was not aware or should have reasonably been aware that OWCP paid compensation incorrectly.

The claimant disagreed with the preliminary decision, and his attorney requested a pre-recoupment hearing on the issues of whether the overpayment occurred. A review of the case file was undertaken.

It is noted that the date of injury reported is January 17, 2017. He began receiving wage loss compensation from OWCP on March 04, 2017. The date of the overpayment began on November 01, 2016. It is not clear how an overpayment would have occurred in relation to this injury for the period prior to the injury date.

In addition, the information in file does not establish that the claimant was covered under the FERS retirement plan. The SF50 in file indicates FICA and CSRS partial. There is no evidence to suggest that the Office contacted the Office of Personnel Management, (OPM) for verification of the retirement plan that the claimant was covered under.

Based on review of the written evidence of record, I find that the December 04, 2018 preliminary determination of an overpayment was premature and must be set aside.

The first question to be determined is whether the overpayment occurred. I find the evidence is insufficient to establish that an overpayment in the amount of \$13,028.93 occurred, because the period identified begins prior to the work injury and the evidence of file indicates he was not part of the Federal Employees Retirement System. The employing agency reported that he was part of FICA, (Federal Insurance Contributions Act) and CSRS (Partial).

An overpayment cannot be established without first resolving the issue of the claimant's correct retirement plan and the correct period of compensation.

Upon return of the case file, the District Office should contact OPM for verification of the claimant's retirement plan. Following completion of the further development/resolution of the issue, the District Office should issue a new preliminary finding of overpayment with a new calculation.

Consistent with the above findings, the decision of the District Office dated December 04, 2018 is REVERSED and the case file REMANDED for further action as described above.

ISSUED:  
Washington, D.C.

Electronically Signed

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Betty W.  
Hearing Representative  
Branch of Hearings and Review  
for  
Director, Office of Workers'  
Compensation Programs