

File Number:  
HR10-D-H

RECEIVED DEC 06 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 hearing was held on \_\_\_\_\_ As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's 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.  
QUEENSBOROUGH BANK BUILDING  
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, November 29, 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 | Case No. | An  
oral hearing was held on

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The issues for determination are whether the claimant was overpaid compensation in the amount of \$50,047.16 for the period through and whether waiver of the overpayment is appropriate.

The claimant, born , was employed as a by the . It was accepted she injured her right shoulder on . Her traumatic injury claim was accepted for bilateral rotator cuff tears, shoulder sprains, bilateral lymphedema, adhesive capsulitis of the left shoulder, enesopathy of the right elbow and bilateral reflex sympathetic dystrophy.

She was paid compensation for disability on the periodic roll. She also began receiving age based retirement benefits from the Social Security Administration (SSA). During her employment she was covered by the Federal Employees' Retirement System (FERS). The receipt of age based SSA retirement benefits attributable to FERS covered employment is a prohibited dual benefits.

Only the portion of SSA age based retirement benefits attributable to FERS covered employment is subject to offset. On the SSA indicated the claimant began receiving age based SSA retirement benefits on and provided the amounts of SSA benefits with and without FERS covered employment included.

On a preliminary determination that she was overpaid compensation in the amount of \$50,047.16 for the period through was issued. She was found without fault in the creation of the overpayment as due to the complexity of benefits administration she could not reasonably have known that she was improperly paid.

A telephone hearing was held on . The claimant was not present at the hearing. Her attorney, Paul Felser, appeared on her behalf.

Mr. Felser stated the claimant receives both her own benefits and survivor's benefits from the SSA and he is not certain if only the amounts attributable to her benefits were included in the calculation. He indicated the claimant's husband passed away in and she has received survivor's benefits since that time. He explained it has been very difficult to obtain a breakdown from the SSA. She contacted the SSA and they began sending her a combined benefits statement. He and the claimant were able to tell the benefits were combined

Washington DC, November 29, 2019

because the amount was consistent with what they expected on the statement when her benefit and her husband's benefit amounts were combined. When she received SSA disability benefits her benefit and the survivor's benefit were reported separately.

Mr. Felser stated that if the SSA is reporting the claimant's benefit amounts to the Office in the same manner they are reporting the benefit amounts to the claimant her survivor's benefits would be included in the benefit amount provided although they are not subject to offset.

He further stated the claimant received OPM benefits from \_\_\_\_\_ to \_\_\_\_\_ because she was receiving a schedule award. It is his understanding only wage loss benefits and not schedule award benefits are subject to FECA FERS offset.

Mr. Felser indicated the claimant is requesting waiver of the overpayment and the concept of detrimental reliance is applicable because the claimant had good reason to believe the funds were her's to spend as she needed. It would be inequitable and unfair for the claimant to underwrite and be the guarantor of the error.

Section 8116(d) of FECA requires that compensation benefits be reduced by the portion of Social Security (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 disability compensation benefits under FECA shall be reduced by the amount of SSA benefits attributable to his or her federal service.<sup>1</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>2</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>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>

I find that fact of overpayment has been established however the period of the overpayment must be modified. An exception to the dual benefits deduction is when schedule award benefits are paid concurrently with age based SSA retirement benefits.<sup>5</sup>

<sup>1</sup> 5 U.S.C. § 8116(d); D.S., Docket No. 12-689 (issued October 10, 2012)

<sup>2</sup> R.C., Docket No. 09-2131 (issued April 2, 2010)

<sup>3</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); R.B., Docket Number 15-0192 (issued August 6, 2015)

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

Schedule awards were paid for the following periods: \_\_\_\_\_ through \_\_\_\_\_  
 through \_\_\_\_\_ and \_\_\_\_\_ through \_\_\_\_\_

As there is no offset of age based FERS retirement benefits against schedule award benefits the overpayment must be recalculated to exclude the periods schedule awards were paid. The overpayment was calculated for the period \_\_\_\_\_ through \_\_\_\_\_ in its entirety without excluding the periods schedule awards were paid from the overpayment calculation.

Clarification is also needed from the SSA regarding whether benefits received on the claimant's late husband's records was included in the benefit amounts provided. Mr. Felser explained that the claimant receives a consolidated statement of benefits from the SSA and has been unable to obtain a statement separately listing the SSA benefits based on her record and those based on her husband's record.

In E.H. <sup>6</sup> the claimant asserted that she received Social Security benefits based on her husband's record. The Employees' Compensation Appeals Board remanded the case to the Office to verify with the Social Security administration that the claimant received benefits attributable to her federal employment.

The preliminary overpayment determination dated \_\_\_\_\_ is vacated. On remand the Office should contact the SSA to clarify whether the SSA benefit amounts provided were based only on SSA benefits attributed to the claimant's own record. IF SSA benefits attributable to the claimant's spouse's record were included in the amounts of SSA benefits with FERS included the SSA should provide corrected calculations. If SSA benefits attributable to the claimant's spouse's record were not included in the amounts of SSA benefits with FERS a statement from the SSA indicating this should be provided.

The Office should then recalculate the overpayment excluding the periods for which schedule awards were paid. A new preliminary overpayment determination should then be issued.

The case is returned to the District Office for actions consistent with this decision.

Issued:  
 Washington, D.C.

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

<sup>5</sup> See FECA Bulletin 97-09

<sup>6</sup> Docket Number 16-1465 (issued December 19, 2016)