

File Number:
HR11-D-H

RECEIVED MAR 24 2017

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

Hearing Representative

PAUL FELSER, ESQ
FELSER LAW FIRM PC
QUEENSBOROUGH BANK BUILDING
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

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.

Washington DC, March 21, 2017

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
the preliminary overpayment decision of the district office dated
for the reasons set forth below.*

*Based on the review,
is set aside*

The issue for determination is 1) whether the claimant was overpaid \$958.48 for the periods of _____ through _____ and _____ through _____ 2) whether she 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.

_____ born on _____, is employed as a _____ by the _____ in _____. On _____ she suffered a Traumatic Injury while in the performance of duty. Specifically, she fell and injured her right arm. The claim is approved for a torus fracture of the upper end of the right humerus.

The Office began paying wage loss compensation for total disability effective _____
The claimant was placed on the automatic 28 day periodic roll cycle effective _____

On _____ the Office sent a FERS/SSA Dual Benefits calculation worksheet to the Social Security Administration for completion. On _____ the Office received a completed copy of the worksheet with an author date of _____. This document confirmed that _____ was in receipt of Social Security benefits while also receiving FECA benefits. The Social Security Administration listed the SSA rate with FERS and the SSA rate without FERS beginning _____. Based upon this information, the Office performed an offset calculation to determine whether an overpayment existed.

The FERS/SSA Dual Benefits calculation worksheet provided figures dating back to _____ however the claimant did not begin receiving wage loss benefits in the instant case until _____. Therefore, the Office is only concerned with the pay rate information as of _____. Effective this date, the SSA rate with FERS was \$1,334.00 and the rate without FERS was \$1,115.40. The monthly FERS Offset was \$218.60 and the 28 day FERS

Washington DC, March 21, 2017

Offset was \$201.78. The claimant was partially overpaid for the period of _____ to _____ which was a total of 72 days. Therefore, the 28 day FERS Offset of \$201.78 was divided by 28 and multiplied by 72 for a total of \$518.87. This is the amount overpaid from _____ to _____. Then, from _____ to _____ the claimant was partially overpaid for a total of 61 days. The 28 day FERS Offset of \$201.78 was divided by 28 and multiplied by 61 for a total of \$439.60. This is the amount overpaid from _____ to _____. Based upon this, the total overpayment was calculated to be \$958.48.

On _____ the District Office issued a Preliminary Overpayment decision finding _____ responsible for an overpayment in the amount of \$958.48 for the period of _____ to _____ (with the exception of _____). However, she was found without fault in the creation of the overpayment. Specifically, the Office stated that she was not aware nor could she reasonably have been expected to know that OWCP had paid compensation incorrectly. She was already over the age of 62 when the claim was filed. Therefore, she was not notified by the "usual age 62 letter" of the potential for FERS dual benefits. Additionally, she was not on the automatic 28 day periodic roll cycle, therefore she had not been issued the CA-1049 form or annual EN-1032 form which addressed reporting requirements/dual benefits.

The claimant disagreed with the preliminary overpayment decision and requested an oral 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 _____ should be *SET ASIDE* and *REMANDED* for further development.

Section 8116 provides for limitations on the right to receive compensation, stating that an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that -- in the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under the FECA based on the federal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to federal service of that employee covered by chapter 84.¹

In the instant case the Office issued a preliminary overpayment decision dated _____ which found that _____ had been overpaid in the amount of \$958.48 for the period of _____ to _____ (with the exception of _____). Specifically, she was overpaid \$518.87 from _____ to _____ and \$439.60 from _____ to _____. The Office found her without fault in the creation of the overpayment.

On review, I find that the case is not in posture for a hearing at this time. At the time the overpayment was declared, the Office indicated that Ms. Foster had been overpaid through _____. At the time of issuance, this was indeed correct. However, following the

¹ WK (CK), 55 ECAB _____ (Docket No. 02-1645, issued October 7, 2003).

issuance of the preliminary overpayment decision, the District Office continued to process wage loss compensation payments and the claimant was ultimately placed on the automatic 28 day periodic roll cycle effective [redacted]. While the Office continued to pay wage loss compensation, they failed to offset the [redacted] compensation based upon her receipt of Social Security Benefits. As of the date of this decision, [redacted] has been paid through [redacted] for total disability and no offset has been applied. Therefore, the overpayment related to the claimant's receipt of Social Security benefits is significantly larger than what was initially calculated. Specifically, the overpayment was declared through [redacted] however the Office has continued to issue payments from [redacted] through [redacted] within which they failed to apply the proper offset.

For the reasons outlined above, the evidence now supports a larger overpayment than what was previously calculated.² Upon return of the case file the Office is instructed to develop to the Social Security Administration and request an updated FERS/SSA Dual Benefits calculation worksheet since this most recent figures provided on the [redacted] form were from [redacted]. Upon receipt, an overpayment should be calculated based upon an offset related to the receipt of SSA benefits for the periods of [redacted] to [redacted] and [redacted] to [redacted]. A new preliminary overpayment determination should be issued. Additionally, the Office should ensure that the appropriate offset amount is deducted from ongoing compensation payments to avoid any further overpayment.

Accordingly, the preliminary overpayment determination dated [redacted] is hereby **remanded** and 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

² Chapter 6-0200(4)(b)(2) of the FECA Procedure Manual dictates that if the Hearing Representative finds that the amount of the debt is significantly larger than that outlined in the preliminary decision, 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.

³ The end date of the overpayment may need to be adjusted if another periodic roll check is issued before the Office receives the necessary information from the Social Security Administration.