

**United States Department of Labor
Employees' Compensation Appeals Board**

C.E., Appellant)	
)	
and)	Docket No. 13-933
)	Issued: August 23, 2013
U.S. POSTAL SERVICE, SOUTH TYLER)	
ANNEX, Tyler, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On March 11, 2013 appellant filed a timely appeal from January 31 and February 7, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) finding that she received an overpayment of compensation and denying waiver of recovery of the overpayment. The Board docketed the appeal as No. 13-933.

By letter dated December 31, 2012, OWCP issued a preliminary determination finding that appellant received a \$1,744.89 overpayment of compensation from December 3, 2011 to December 15, 2012 because it failed to deduct postretirement insurance premiums. It further advised her that she was without fault in creating the overpayment and of her rights if she disagreed with the preliminary finding. In a decision dated January 31, 2013, OWCP determined that appellant received an overpayment of \$1,744.89 due to its failure to deduct premiums for postretirement life insurance and denied waiver of recovery of the overpayment. It found that she had not responded to its preliminary determination of overpayment. On February 7, 2013 OWCP issued what it identified as a corrected copy of the January 31, 2013 decision containing the same findings but without the accompanying memorandum.

The Board finds that the case is not in posture for decision. On appeal appellant contends that she did not receive the December 31, 2012 preliminary overpayment determination. Under the mailbox rule it is presumed, in the absence of evidence to the contrary, that a notice mailed to

an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹ As a rebuttable presumption, receipt will not be presumed when there is evidence of nondelivery.²

The record in this case contains direct evidence of nondelivery of the December 31, 2012 preliminary overpayment determination. Although properly addressed to appellant, the U.S. Post Office returned the notice to OWCP as undeliverable. It noted on the envelope: return to sender, no such number, unable to forward. OWCP received the nondelivered preliminary overpayment determination on January 15, 2013. Consequently, appellant has successfully rebutted presumption of receipt of the December 31, 2012 preliminary determination of overpayment under the mailbox rule.³

OWCP is required to follow certain procedures in overpayment cases. Its regulations provide that, before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of the overpayment.⁴ The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁵ OWCP must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.⁶ Its procedure manual further provides that a preliminary finding of overpayment must be provided within 30 days and must clearly identify the reason that the overpayment occurred and the basis for any fault finding.⁷

As appellant did not receive a copy of the preliminary overpayment determination, the case will be remanded for OWCP to issue a preliminary overpayment determination in accordance with its procedures.

¹ See *Michelle Lagana*, 52 ECAB 187 (2000).

² See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

³ See *M.O.*, Docket No. 09-526 (issued September 14, 2009).

⁴ 20 C.F.R. § 10.431(a).

⁵ *Id.* at § 10.431(b).

⁶ *Id.* at § 10.431(d).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a) (June 2009).

IT IS HEREBY ORDERED THAT the January 31 and February 7, 2013 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order by the Board.

Issued: August 23, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board