

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

R.P., daughter of L.P., Appellant)	
)	
and)	Docket No. 14-136
)	Issued: August 13, 2014
DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Oracle, AZ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 24, 2013 appellant filed a timely appeal from August 6 and September 9, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$12,979.54 for the period January 14, 2012 through May 4, 2013 because she reached 23 years of age on January 13, 2012; and (2) whether OWCP properly determined whether appellant was at fault in creating the overpayment.

On appeal appellant asserts that she is disabled and not responsible regarding the overpayment.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 24, 1992 appellant's father, the employee, was electrocuted in the course of his federal employment. On March 22, 1993 his widow, appellant's mother, elected to receive FECA benefits. OWCP awarded augmented benefits on April 8, 1993 for the widow and her minor child, appellant, who was born on January 13, 1989.²

In correspondence dated September 25, 2007, OWCP informed the widow that appellant could continue to receive compensation after her eighteenth birthday, but only if she was unmarried and either incapable of self-support or was a full-time student. The widow continued to receive the augmented benefits for her and appellant until September 30, 2007 when appellant began receiving a 15 percent share by separate check. The widow received a 45 percent share. At that time appellant was 18 years of age and a full-time college student. The record supports that she continued to attend college through January 2011.

On October 2, 2012 OWCP sent a Form CA-12, Claim for Continuance of Compensation, to appellant. On October 15, 2012 it received the completed form, signed by appellant on October 10, 2012. Appellant indicated that she was not capable of self-support because she was disabled.

By letter dated May 8, 2013, OWCP informed appellant that her benefits had expired because she turned 23 years of age on January 13, 2012.

On June 18, 2013 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$12,979.54 for the period January 14, 2012 to May 4, 2013 because she continued to receive dependent benefits after her 23rd birthday that had occurred on January 31, 2012. Appellant was found without fault. The June 18, 2013 preliminary determination stated that she was not at fault because she could not have been aware or reasonably have been expected to know that OWCP had paid compensation incorrectly. OWCP advised appellant of the steps to be taken if she disagreed with the preliminary determination and provided her an overpayment action request form and overpayment questionnaire.

The overpayment action request was completed by appellant's mother, the widow, on July 14, 2013. The widow stated that appellant, her daughter, was totally disabled and lived on full disability. She inquired whether statements from appellant's physicians were needed. The widow concluded that there was no possible way appellant could repay the overpayment and requested a decision on the record. No further information was submitted by appellant or her mother.

On August 6, 2013 OWCP finalized the overpayment finding and stated that it had determined that the preliminary finding that appellant was at fault was correct. It noted that the

² The widow remarried on June 15, 1995. The marriage was annulled on October 4, 1995. By decision dated December 22, 1997, the Board affirmed a July 27, 1995 OWCP decision that found that OWCP did not have to pay the widow attorney's fees as the record contained no application for legal services; that she should seek reimbursement for her medical expenses with her insurance carrier; and that her survivor's benefits could resume as of the date of the June 1995 marriage, which had been annulled. Docket No. 96-372 (issued December 22, 1997). She again remarried on May 23, 2008.

overpayment questionnaire had not been provided and that appellant herself had not responded to the preliminary determination. Appellant was instructed to forward a check in the amount of \$12,979.54 to OWCP. On September 9, 2013 OWCP issued a second overpayment decision in which it indicated that appellant was without fault and that the overpayment would not be waived.³

LEGAL PRECEDENT

Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁴

Section 8133 of FECA provides that compensation in case of death from an injury sustained in the performance of duty is payable to a child until the child has reached 18 years of age, but shall continue if he or she is a student as defined by section 8101(17) at the time he or she reaches 18 years of age for so long as he or she continues to be such student or until he or she marries.⁵ The term student is defined in section 8101(17) as an individual under 23 years of age who has not completed four years of education beyond high school and who is regularly pursuing a full-time course of study.⁶

OWCP procedures provide that, when claims are made by or for children over 18 who are physically or mentally incapable of self-support, the claims examiner must investigate the extent and expected duration of the illness involved.⁷

ANALYSIS

The Board finds this case is not in posture for decision regarding whether an overpayment of compensation was created. The record supports that appellant, who was born on January 13, 1989, received survivor benefits from the death of her father on August 24, 1992, through May 4, 2013. She turned 23 years of age on January 13, 2012, and OWCP found that an overpayment of compensation was created for the period January 14, 2012 through May 4, 2013.

On October 2, 2012 OWCP forwarded a Form CA-12, Claim for Continuance of Compensation, to appellant. Appellant returned the claim form on October 15, 2012 and indicated that she was not capable of self-support because she was disabled.

³ The September 9, 2013 decision did not indicate that the August 6, 2013 decision was vacated or amended.

⁴ 5 U.S.C. § 8129.

⁵ *Id.* at § 8133; see *Grady Lewis (Vanessa Lewis)*, 55 ECAB 306 (2004).

⁶ *Id.* at § 8101(17).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.700.8.c. (July 2000).

As noted above, when claims are made by or for children over 18 years of age who are physically or mentally incapable of self-support, the claims examiner must investigate the extent and expected duration of the illness involved.⁸ There is no evidence that OWCP followed these procedures in this case, such as informing appellant of the type evidence needed to support her disability claim. Rather, it determined that an overpayment of compensation had been created.

The Board will set aside the August 6, 2013 decision and remand the case to OWCP to follow its procedures regarding appellant's claim for continued survivor benefit compensation due to disability. Following this and such further development as deemed necessary, OWCP should render a *de novo* overpayment decision.

Based on the Board's finding regarding issue 1, issue 2 is rendered moot.

CONCLUSION

The Board finds this case is not in posture for decision regarding whether an overpayment of compensation was created.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 9 and August 6, 2013 are set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.⁹

Issued: August 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁸ *Id.*

⁹ Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014.