

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

E.D., Appellant	)	
	)	
and	)	Docket No. 18-1753
	)	Issued: August 13, 2019
U.S. POSTAL SERVICE, MURRAY HILL	)	
STATION, New York, NY, Employer	)	
	)	

*Appearances:*  
James D. Muirhead, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On September 17, 2018 appellant, through counsel, filed a timely appeal from May 18 and June 27, 2018 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1753.

The Board has duly considered the matter and finds that this case is not in posture for decision and must be remanded to OWCP.

By notice dated March 20, 2018, OWCP advised appellant of its preliminary determination that she had received a \$35,949.01 overpayment for the period October 18, 2014 through February 3, 2018 because she received prohibited dual benefits in the form of wage-loss compensation under the Federal Employees' Compensation Act (FECA) and benefits from the Office of Personnel Management (OPM) for the same period. It also made a preliminary determination that she was at fault in the creation of the overpayment as she was aware, or should

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

have been aware, that her compensation payments had been paid incorrectly. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified her that within 30 days of the date of the letter she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a letter dated March 26, 2018, received by OWCP on that same date, counsel requested a telephone conference if OWCP refused to withdraw the March 20, 2018 preliminary notice of overpayment.

On May 18, 2018 OWCP finalized the overpayment determination without holding a hearing. It found that appellant had not submitted evidence as to the fact and amount of the overpayment or on the issue of fault and required repayment of the overpayment in full within 30 days.

In a letter dated May 29, 2018, counsel disagreed with the May 18, 2018 overpayment decision and requested a telephonic hearing.

By decision dated June 27, 2018, OWCP denied counsel's request for an oral hearing as it was not mailed within 30 days of the March 20, 2018 preliminary notice of overpayment.

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 provides that, before seeking recovery of an overpayment, it will advise a claimant in writing that the overpayment exists, and the amount of the overpayment.<sup>2</sup> The preliminary notice 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.<sup>3</sup> The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a prerecoupment hearing requested within 30 days.<sup>4</sup>

On March 20, 2018 OWCP informed appellant of its preliminary determination and notified her of her procedural rights, including the right to request a telephone conference within 30 days. On March 26, 2018 appellant, through counsel, made a timely request for a telephone conference. OWCP, however, did not conduct a telephone conference before issuing its final overpayment decision. Counsel subsequently again requested a telephone conference. OWCP then denied appellant's request by decision dated June 27, 2018. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged fact and amount of overpayment, or any other issues.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.431(a).

<sup>3</sup> *Id.* at § 10.431(d).

<sup>4</sup> *Id.* at § 10.432.

<sup>5</sup> *See I.R.*, Docket No. 18-0088 (issued April 9, 2018); *Scherrie L. Stanley*, 53 ECAB 433 (2002).

The Board, therefore, finds that OWCP issued a final decision denying waiver of recovery of the overpayment of compensation without providing appellant due process.<sup>6</sup> Because appellant, through counsel, timely requested a prerecoupment hearing, the case will be remanded to OWCP to schedule the requested hearing to be followed by an appropriate decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the June 27 and May 18, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 13, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *K.P.*, Docket No. 17-1396 (issued May 4, 2018); *J.M.*, Docket No. 14-0280 (issued May 5, 2014); see generally *James B. Moses*, 52 ECAB 465 (2001).