

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

W.J., Representative of the Estate of E.J.,)
Appellant)
and) Docket No. 18-1035
DEPARTMENT OF THE ARMY, TRAINING &)
DOCTRINE COMMAND, Fort Benning, GA,) Issued: July 9, 2019
Employer)

)

Appearances:

Robert S. Poydasheff, Esq., for the appellant¹
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 April 23, 2018 appellant, through counsel, filed a timely appeal from a March 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 18-1035.

¹ 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.

² Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated April 4, 2019, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1035 (issued April 4, 2019).

The Board has duly considered the matter and finds that the case is not in posture for decision.

OWCP accepted that on December 14, 1989 the employee, then a 49-year-old fire protection inspector, sustained a cervical strain and an aggravation of preexisting cervical spondylosis as a result of a work-related motor vehicle accident. The employee stopped work on December 14, 1989 and did not return. OWCP paid wage-loss compensation and medical benefits. In February 1990 it placed the employee on the periodic rolls. The employee died on October 23, 2017.

By notice dated January 25, 2018, OWCP advised the employee's estate of its preliminary determination of an overpayment of compensation in the amount of \$20,535.14 due to its failure to deduct the employee's postretirement life insurance premiums from no reduction to 50 percent reduction for the period May 12, 1993 through October 23, 2017 and its failure to deduct optional life insurance premiums for the period February 5, 1991 through October 23, 2017. It also found that the employee had been at fault in the creation of the overpayment as he should have reasonably been aware that the premiums were not deducted from the ongoing wage-loss compensation benefits. OWCP advised the employee's estate that it could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It also directed the employee's estate to complete an overpayment recovery questionnaire (Form OWCP-20), and advised it of its appeal rights. OWCP provided copies of the employee's compensation benefits, which he received by check, along with its overpayment calculation worksheets.

On January 31, 2018 appellant, the employee's spouse, contested the finding of fault as to the overpayment and requested waiver. She denied having knowledge of anything that had occurred between the employee and OWCP. Appellant did not complete or return the Form OWCP-20 or provide any financial documentation.

By decision dated March 26, 2018, OWCP finalized the overpayment of compensation and the finding of fault, noting that the employee's estate had not refuted either the fact or amount of the overpayment or the finding of fault. It required repayment of the overpayment in full.

OWCP's procedures regarding recovery of an existing debt from a deceased employee's estate which were in effect at the time of OWCP's March 26, 2018 decision provided as follows:³

"Upon learning that a claimant with an existing overpayment has died, the District Office shall immediately contact the OPM to determine the availability of any OPM benefits payable at the time of death that may be administratively offset, e.g., basic employee death benefits, survivor annuity benefits, or lump[-]sum refund of the deceased employee's retirement contributions (5 C.F.R. § 831.1805).

"If the claimant recently passed away, OWCP may refer the debt to FMS [Financial Management System] for offset of the deceased claimant's last Federal tax refund under the Treasury's Offset Program (TOP). 31 C.F.R. § 285.2. The OWCP has a

³ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(e)(2) (June 2009).

special profile with FMS under TOP for the collection of these specific estate debts....”

To initiate action against an estate for debt recovery, OWCP’s procedures require that certain steps be taken. If the estate requests a waiver determination or otherwise asks to be excused from the debt, then financial information should be requested from the estate and a waiver determination should be prepared. However, in most situations waiver will be denied and collection will proceed if the estate’s resources, after liabilities are established, allows for recovery of the overpayment. The Board has held that OWCP must follow its procedures when initiating action against an estate for debt recovery.⁴

The evidence of record does not substantiate the actions OWCP has taken to recover the overpayment debt through an offset from OPM benefits or through the Treasury Offset Program, prior to taking overpayment actions against the estate. Although OWCP has demanded repayment of the overpayment in full, the Board cannot make an informed decision regarding the amount of overpayment to be collected against the estate. The case shall therefore be remanded for OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedure manual.⁵ Following this

⁴ See C.A., Docket No. 18-0470 (issued March 7, 2019); K.S., Docket No. 11-2021 (issued August 21, 2012).

⁵ Supra note 3 at Chapter 6.500.15 (September 2018).

and any other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding the deceased employee's overpayment.

IT IS HEREBY ORDERED THAT the March 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action in accordance with this order of the Board.

Issued: July 9, 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