

compensation under the Federal Employees' Compensation Act³ (FECA) and from the Social Security Administration (SSA) without an appropriate offset. It also made a preliminary determination that she was at fault in the creation of the overpayment as she was aware or should have reasonably 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 written evidence, or a prereducement hearing by completing an attached overpayment action request.

On August 8, 2017 appellant authorized her son D.L. to represent her. She indicated that his address of record was in Reno, Nevada. Appellant and her representative forwarded an overpayment action request dated September 1, 2017, received by OWCP on September 5, 2017, in which the box requesting a telephone conference was checked.⁴

On November 13, 2017 OWCP issued a revised preliminary overpayment determination. The only change to the July 27, 2017 determination was that the amount of the overpayment was modified to \$14,420.81. Appellant was again provided a Form OWCP-20 and an overpayment action request and was again afforded 30 days from the date of the preliminary determination, as determined by the postmark of her submission. A copy of the determination was sent to her representative. On November 28, 2017 the copy of the November 13, 2017 preliminary determination, addressed to appellant's representative at his address of record in Reno, Nevada was returned to OWCP as undeliverable, stating "not at this address."

On December 12, 2017 appellant's representative telephoned OWCP. He indicated that he had not received a copy of the November 13, 2017 preliminary determination, noting that appellant had just given her copy to him. He requested additional time to submit additional evidence. OWCP responded, "So I gave him until December 26, and advised him that I can't give him additional time beyond the stated 30 days if he wants to request a hearing."

In a Form OWCP-20 dated December 14, 2017, received by OWCP on December 18, 2017, appellant and her representative again requested a telephone conference, disagreed with the fact of overpayment, disagreed with the amount of the overpayment, and requested waiver of recovery of the overpayment. The attached OWCP-20 indicated that there had been no change from the previously submitted questionnaire. Appellant indicated that she had requested counsel to assist in this matter.

By letter dated December 19, 2017, counsel again requested a telephone conference. He attached an overpayment action request, also indicating that he was challenging fact and amount of the overpayment and requesting waiver.

By decision dated March 19, 2018, OWCP finalized the preliminary determination of a \$14,420.81 overpayment of compensation. It found appellant at fault because she had not reported

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant's representative also contested fact of overpayment. The Form OWCP-20 and financial information were provided.

that she was receiving SSA payments as part of an annuity for federal service. As such, she was found to be not entitled to waiver of recovery of the overpayment. OWCP required repayment of the overpayment by deducting \$300.00 every 28 days from appellant's continuing FECA compensation payments.

OWCP is required to follow certain procedures in overpayment cases. Section 10.431(a) of OWCP regulations 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.⁵ The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁶ Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.⁷ Lastly, 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.⁸ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a preresoupment hearing requested within 30 days.⁹

The Board finds that, under the facts presented, appellant was not provided the required opportunity to provide testimonial evidence regarding the alleged overpayment.¹⁰ On November 13, 2017 OWCP informed appellant of its preliminary determination that she received a \$14,420.81 overpayment of compensation and that she was at fault in the creation of the overpayment and thus not entitled to waiver of recovery of the overpayment. It included her procedural rights, including the right to request a telephone conference within 30 days. The record supports that a copy of the November 13, 2017 preliminary determination was forwarded to appellant's representative D.L. at his address of record, however, this was returned to OWCP as undeliverable. When D.L. notified OWCP by telephone on December 12, 2017 that he had not received the November 13, 2017 preliminary determination until that day when appellant furnished a copy, OWCP advised him that he was afforded until December 26, 2017 to submit additional information. While the telephone memorandum of record stated "(I) advised him that I can't give him additional time beyond the stated 30 days if he wants to request a hearing," the statement is unclear as to when the allotted 30 days began. On an overpayment action request form dated December 14, 2017, received by OWCP on December 18, 2017, appellant again requested a telephone conference.

Accordingly, for the foregoing reasons, the March 19, 2018 decision will be set aside and the case will be remanded to OWCP to provide appellant her right to a telephone conference.

⁵ 20 C.F.R. § 10.431(a).

⁶ *Id.* at § 10.431(b).

⁷ *Id.* at § 10.431(c).

⁸ *Id.* at § 10.431(d).

⁹ *Id.* at § 10.432.

¹⁰ *See I.R.*, Docket No. 18-0088 (issued April 9, 2018).

Following this and such other development deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the March 19, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: June 20, 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