

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

V.R., Appellant)	
)	
and)	Docket No. 18-1117
)	Issued: June 20, 2019
GENERAL SERVICES ADMINISTRATION,)	
NCR PUBLIC BUILDING SERVICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Appellant, pro se
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 May 10, 2018 appellant filed an appeal from a February 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-1117.

By letter dated May 23, 2017, appellant advised OWCP of a change of address.

By notice dated September 21, 2017, OWCP made a preliminary determination that an overpayment of \$46,152.84 was created for the period from April 1, 2011 through March 4, 2017 because appellant was paid dual compensation under the Federal Employees' Compensation Act¹ (FECA) and from the Social Security Administration (SSA) without an appropriate offset creating a prohibited dual benefit. It found that he was with fault in the creation of the overpayment because he accepted a payment that he knew or reasonably should have known was incorrect. OWCP informed him of his review rights and instructed him to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation within 30 days.

¹ 5 U.S.C. § 8101 *et seq.*

The proposed notice was sent to appellant's former address and not to the updated address provided on May 23, 2017.

On October 11, 2017 the preliminary overpayment determination was returned to OWCP by the U.S. Postal Service, marked as "vacant", "unable to forward," and "return to sender."

On November 6, 2017 OWCP reissued the preliminary September 21, 2017 overpayment decision and mailed the notice to appellant's current address of record.

Although properly addressed, based on the information provided by appellant, the U.S. Postal Service returned OWCP's November 6, 2017 decision as undeliverable.² It noted on the envelope: return to sender, not deliverable as addressed, unable to forward. OWCP received the undelivered document on November 20, 2017.

By decision dated February 6, 2018, OWCP finalized its preliminary determination finding that an overpayment of \$46,152.84 was created for the period from April 1, 2011 through March 4, 2017 because appellant was paid dual compensation under FECA and SSA without an appropriate offset. It found that appellant was at fault in the creation of the overpayment and failed to respond to its preliminary notice. OWCP further determined that the overpayment would be collected by deducting \$300.00 monthly from his continuing compensation benefits.

OWCP's procedures require that it provide written notice informing the individual of the existence and amount of the overpayment before seeking recovery or adjusting benefits.³ It must additionally advise the individual whether he is at fault in the creation of the overpayment,⁴ his right to challenge the fact or amount of the overpayment, his right to contest the preliminary finding of fault in the creation of the overpayment and, if applicable, his right to request a waiver of recovery of the overpayment.⁵ OWCP must provide a preliminary finding of overpayment within 30 days that clearly identifies the reason the overpayment occurred and the basis for any fault finding.⁶

On November 6, 2017 OWCP mailed appellant a properly addressed notice of preliminary overpayment determination. The mailbox rule provides that proper and timely mailing of a document in the ordinary course of business raises a rebuttable presumption of receipt by the addressee.⁷ As a rebuttable presumption, receipt will not be presumed, however, when there is

² C.C., Docket No. 14-0745 (issued July 29, 2014).

³ 20 C.F.R. § 10.431(a).

⁴ *Id.* at § 10.431(b).

⁵ *Id.* at § 10.431(d).

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

⁷ *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *J.M.*, Docket No. 12-0543 (issued March 12, 2013).

evidence of nondelivery, and the presumption may also be rebutted by other evidence that supports that the addressee did not receive the correspondence.⁸

The record in this case contains direct evidence of nondelivery of the November 6, 2017 preliminary overpayment determination.⁹ Although properly addressed to appellant's last known address, the U.S. Postal Service returned the notice to OWCP as undeliverable and unable to forward.¹⁰ OWCP received the nondelivered preliminary overpayment determination on November 20, 2017. Despite receiving the notice as undeliverable, it made no further attempt to reissue the preliminary determination. The Board finds that the returned envelope constitutes evidence of nondelivery and rebuts the presumption of receipt.¹¹ Because appellant had not received the November 6, 2017 preliminary overpayment determination, he was not afforded an opportunity to challenge the fact and amount of overpayment and to request a waiver of recovery of the overpayment.¹²

As OWCP did not comply with the procedural rights afforded to appellant under its regulations, the Board finds that it improperly issued its final overpayment decision without proper notice.¹³ Consequently, the February 6, 2018 decision is hereby set aside.¹⁴ Accordingly,

⁸ *Id.*

⁹ *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

¹⁰ *K.N.*, Docket No. 16-1412 (issued December 20, 2016).

¹¹ *See M.U.*, Docket No. 09-0526 (issued September 14, 2009).

¹² *Supra* note 9.

¹³ *L.G.*, Docket No. 17-0004 (issued April 17, 2017).

¹⁴ 20 C.F.R. §§ 10.431, 10.432; *see also K.H.*, Docket No. 11-0603 (issued September 27, 2011); *K.G.*, Docket No. 08-2135 (issued April 16, 2009).

IT IS HEREBY ORDERED THAT the February 6, 2018 decision of the Office of Workers' Compensation Programs is set aside and this 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