

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

S.B., claiming as widow of S.B., Appellant)	
)	
and)	Docket No. 18-1420
)	Issued: June 20, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Lubbock, TX, 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 July 17, 2018 appellant filed a timely appeal from a January 18, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-1420.

The employee, then a 45-year-old letter carrier, was injured on November 4, 1987 when he reached up to place mail in a receptacle while in the performance of duty. OWCP accepted right shoulder strain and approved multiple surgeries. It also accepted the condition of major depression. The employee was placed on the periodic compensation rolls in 2004.

On EN1032 forms signed by the employee dated April 1, 2008 to April 16, 2015, he reported that he was receiving Social Security Administration (SSA) benefits. On May 3, 2015 SSA forwarded a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form to OWCP. This indicated that the employee had received SSA retirement benefits beginning in February 2008. SSA also provided information regarding the rates at which he received benefits through 2014.

On June 4, 2015 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$31,239.00 had been created. It explained that the overpayment occurred because a portion of the employee's SSA benefits that he received from February 1, 2008 to May 30, 2015 was based on credits earned while working in the Federal Government, and that this portion of his

SSA benefits was a prohibited dual benefit. OWCP found the employee not at fault in the creation of the overpayment and provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20).

Appellant's wife notified OWCP that the employee died on July 15, 2015.¹ The preliminary overpayment was resent on July 28, 2015. In a separate letter dated July 28, 2015, OWCP forwarded a questionnaire to be completed by the employee's estate. On August 4, 2015 appellant forwarded an incomplete overpayment action request and an overpayment questionnaire listing household income and household expenses. She attached financial information regarding the employee's burial. On August 11, 2015 appellant submitted her responses to the questionnaire. She indicated that she was the only relative who could be entitled to a share in the distribution of the estate, and responded "NA" to the question of whether an executor or administrator had been appointed. Appellant reported that the employee did not die intestate.

On May 11, 2016 OWCP issued a new preliminary determination, addressed to the employee's estate, finding that an overpayment of compensation in the amount of \$31,239.00 had been created. On an overpayment action request form dated June 10, 2016, appellant requested waiver of the overpayment. She wrote that there was \$0.00 in the employee's estate and she was still paying credit card debt that he owed. Appellant attached an overpayment questionnaire which indicated zero income, zero assets, and credit card expenses of \$16,770.31.

By decision dated January 18, 2018, OWCP finalized the preliminary determination of a \$31,239.00 overpayment of compensation. It determined that the estate was without fault in the creation of the overpayment, but that the circumstances of the case did not warrant waiver of recovery of the overpayment because no supportive financial information had been submitted.

Upon review of the case record submitted by OWCP, the Board finds that the record before it is incomplete. OWCP's procedures provide that when information is received which establishes that benefits have been overpaid, OWCP is responsible for ensuring that an overpayment exists, is formally identified, and that compensation is adjusted accordingly. An overpayment can occur when compensation is not reduced by the FERS/SSA offset.² OWCP's procedures discuss recovery of an existing debt from a deceased debtor's estate, noting that OWCP must quickly and efficiently obtain pertinent information about the estate, noting that state law differs in this regard. The procedures describe action OWCP should take to collect the balance of an overpayment from an estate.³ The procedures indicate that OWCP should immediately contact the Office of Personnel Management (OPM), immediately send a letter to the employee's estate directed to the individual most likely to be named personal representative, and must state that OWCP is making a claim against the estate. It should also request the name of the personal representative or executor for the estate and the name of the court where a probate estate case would be opened. The

¹ The employee's death certificate lists the cause of death as coronary artery disease.

² 5 U.S.C. § 8116(d).

³ These include contacting OPM with specific questions regarding availability of OPM benefits payable at the time of death that may be administratively offset. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(e) (June 2009).

procedures continue that after 30 days, OWCP should send a final overpayment letter to the estate and include additional steps to be taken following a final overpayment determination.⁴

The record establishes that OWCP mailed appellant a form to complete. Appellant's answers were partially nonresponsive, *e.g.*, "NA" to the question of whether an executor or administrator had been appointed, and she indicated that the employee did not die intestate. OWCP did not follow-up and ask more specific questions regarding whether there was an administrator or where the probate case would be opened. Moreover, it did not promptly issue a final overpayment decision. Rather, it waited 20 months before rendering a final overpayment determination.

The Board finds the record lacks sufficient evidence for it to render an informed decision as to the issues pending on appeal. Although OWCP obtained some evidence from OPM, the Board is unsatisfied that this is the type of evidence required under OWCP procedures. The case shall, therefore, be remanded to OWCP for further development. On remand OWCP should obtain more specific information regarding the employee's estate, including probate information, and a marriage license showing that appellant is his widow. After OWCP has developed the record consistent with the above-noted procedures, it shall issue a *de novo* decision regarding the overpayment of compensation.

IT IS HEREBY ORDERED THAT the January 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

⁴ *Id.*

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