

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

D.C., widow of J.C., Appellant	)	
	)	
and	)	
	)	
DEPARTMENT OF JUSTICE, DRUG	)	Docket No. 19-0293
ENFORCEMENT AGENCY, National City, CA,	)	Issued: April 21, 2020
Employer	)	
	)	

*Appearances:*  
Hilary T. Cuevas-Balanon, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 23, 2018 appellant, through her representative, filed a timely appeal from a November 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> The Clerk of the Appellate Boards docketed the appeal as No. 19-0293.

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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.

<sup>2</sup> On July 23, 1985, in a claim adjudicated under File No. xxxxx727, OWCP accepted that the employee sustained adjustment disorder with mixed emotional features. In a claim adjudicated by OWCP under File No. xxxxx728, it accepted post-traumatic stress disorder without agoraphobia and panic disorder. Under the latter claim, OWCP paid appellant paid monetary compensation, commencing May 20, 1991, and placed the employee on the periodic compensation rolls effective November 17, 1991.

The employee died on June 22, 2018.<sup>3</sup> By letter dated July 20, 2018, OWCP informed the Office of Personnel Management (OPM) that, because the employee had died, his compensation had been terminated and his Federal Employees Health Benefits (FEHB) enrollment was being transferred. By letter dated July 24, 2018, addressed to the estate of the employee, care of appellant, OWCP informed her that she should contact OPM regarding the employee's life insurance benefits. On July 24 and August 9, 2018 OPM notified OWCP of the terms of the employee's life insurance and attached election forms, signed by him on January 30, 1992 and January 9, 2002, and information regarding life insurance premiums.

On September 17, 2018 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$106,985.69 had been created for the period April 4, 1992 to June 22, 2018 due to nondeduction of basic and postretirement basic life insurance, and an incorrect deduction of optional life insurance from the employee's compensation benefits.<sup>4</sup> It found the employee without fault and advised appellant of the steps she could take if she disagreed with the preliminary determination. OWCP provided her an overpayment action request form and overpayment recovery questionnaire (Form OWCP-20) and afforded her 30 days to respond.

Appellant's representative completed an overpayment action request, received by OWCP on October 12, 2018. The box requesting a telephone conference was checked.<sup>5</sup>

By decision dated November 5, 2018, OWCP finalized the overpayment determination. It found the employee without fault, but denied waiver of recovery, noting that the assets of the employee's estate totaled \$418,660.00 which exceeded the resource base and, thus, recovery would not defeat the purpose of the Federal Employees' Compensation Act<sup>6</sup> (FECA) or be against equity and good conscience. Overpayment recovery instructions indicated that the full amount of the overpayment was due within 30 days. OWCP noted that, although appellant requested a telephone conference, it was not conducted because there was no issue regarding fault.

Pursuant to *Califano v. Yamasaki*, 422 U.S. 682 (1979), OWCP has established procedures for handling overpayment cases. The Director determined that the United States Supreme Court's holding is applicable to the recovery of overpayments under FECA and requires an opportunity for a prerecoupment hearing.<sup>7</sup> 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. The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment. Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment. Lastly, the preliminary notice must inform the

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<sup>3</sup> The death certificate listed the immediate cause of death as acute respiratory failure with acute interstitial pneumonitis.

<sup>4</sup> The preliminary determination was addressed to the employee's estate and sent to appellant's address of record. A copy was sent to her representative at the same address.

<sup>5</sup> A Form OWCP-20 and financial information were attached.

<sup>6</sup> 5 U.S.C. § 8101 *et seq.*

<sup>7</sup> *F.W.*, Docket No. 14-0504 (issued June 12, 2014); *A.G.*, 58 ECAB 625 (2007).

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. The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a prerecoument hearing requested within 30 days.<sup>8</sup>

OWCP issued new procedures regarding final overpayment determinations in September 2018. Section 6.400.3.d of these procedures provides that OWCP's claims examiner has the sole discretion to conduct a conference following a preliminary overpayment determination.<sup>9</sup>

The preliminary overpayment determination issued on September 17, 2018 informed appellant of the actions she could take, including that she could request a telephone conference. It did not inform her that the decision to hold a telephone conference would be at the discretion of an OWCP claims examiner whereas, if she requested a prerecoument hearing, it would be held as a matter of right.

On appeal appellant's representative notes that a telephone conference had been requested and not held. The Board finds that, under the facts presented, appellant was not provided sufficient information to make an informed decision as to which action she could take. She, therefore, was not afforded the required opportunity to provide testimonial evidence regarding the alleged overpayment.<sup>10</sup>

Accordingly, the November 5, 2018 decision will be set aside and the case will be remanded to OWCP to clearly inform appellant of her rights following a preliminary overpayment determination.<sup>11</sup> Following this and such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>12</sup>

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<sup>8</sup> 20 C.F.R. § 10.431(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3.d (September 2018).

<sup>10</sup> See *J.L.*, Docket No. 18-1028 (issued June 20, 2019).

<sup>11</sup> *Id.* The Board notes that the overpayment action request provided appellant also does not fully explain the ramifications of selections provided and also contains an option for a "teleconference" under the request for a prerecoument hearing option.

<sup>12</sup> Section 6-500.15 describes procedures to be followed for recovery of an existing debt from a deceased debtor's estate. Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 6.500.16.

**IT IS HEREBY ORDERED THAT** the November 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this order of the Board.

Issued: April 21, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board