

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

H.B., Appellant	)	
	)	
and	)	Docket No. 19-0356
	)	Issued: March 20, 2020
DEPARTMENT OF DEFENSE, DEFENSE	)	
AGENCIES, Columbus, OH, Employer	)	
	)	

*Appearances:*  
Ian Michael Overking, Esq., for the appellant<sup>1</sup>  
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 December 5, 2018 appellant, through counsel, filed a timely appeal from an October 29, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 19-0356.

In a March 14, 2018 preliminary notice, OWCP advised appellant of its determination that he had received an overpayment of compensation in the amount of \$41,001.66 because he had received Social Security Administration (SSA) Federal Employees Retirement System (FERS) age-related retirement benefits attributable to his federal service, as well as Federal Employees' Compensation Act (FECA) benefits during the period November 1, 2006 through October 14, 2017. OWCP found that appellant was without fault in the creation of the overpayment. Appellant was provided an overpayment recovery questionnaire (OWCP-20) and was informed of his appeal rights to address waiver of recovery of the overpayment.

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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.

On April 2, 2018 appellant requested a telephone conference with OWCP regarding the issues of fault and possible waiver of recovery of the overpayment.

OWCP and appellant's then-counsel engaged in a series of pre-conference telephone calls regarding the preliminary overpayment decision. In the last memorandum of telephone call to appellant's counsel, dated June 11, 2018, OWCP noted that it had informed counsel that it could compromise the overpayment down to \$9,569.20 and recover the overpayment at a rate of \$80.00 every 28 days, so that the overpayment would be paid, rather than waived.

By decision dated June 26, 2018, OWCP granted waiver of recovery of the entire overpayment. It found that the circumstances of the case warranted waiver of recovery because the period necessary to repay the debt, with charges, would be 668.73 months, which was longer than appellant's life expectancy of 121.2 months.

On September 14, 2018 the employing establishment sent a detailed correspondences to OWCP and requested that it review the June 26, 2018 waiver decision on its own motion. It argued that OWCP had improperly granted waiver of the entire overpayment, because the procedure manual did not allow for waiver of the overpayment principal.<sup>2</sup>

By decision dated October 29, 2018, OWCP found an overpayment of compensation had been created in the amount of \$41,001.66 for which appellant was not at fault. It denied waiver of recovery of the overpayment based on appellant's failure to establish that he required substantially all of his income to meet ordinary and necessary living expenses. It further determined that it would recover the overpayment by deducting \$400.00 every 28 days from his continuing compensation payments. OWCP noted that it had to reopen the decision to waive the debt based upon concerns raised by the employing establishment.

The Board finds that this case is not in posture for decision. OWCP is required by statute and regulation to make findings of fact and provide a statement of reasons.<sup>3</sup> After OWCP granted waiver of recovery of the overpayment on June 26, 2018, but prior to the October 29, 2018 final overpayment decision, OWCP updated its procedures regarding overpayment and debt collection in September 2018. In FECA Transmittal No. 18-04<sup>4</sup>, OWCP explained that it had completely overhauled the debt management processes, including identifying and calculating an overpayment, making preliminary and final determinations, and liquidating the debt. The Board finds that appellant was entitled to a decision which explained why and on what legal basis the June 26, 2018 decision waiving recovery of the overpayment was rescinded in the October 29, 2018 decision. .

The Board notes that the circumstances of this case reflect that appellant's then-counsel was informed during the telephone conference of June 11, 2018 that the overpayment could be

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<sup>2</sup> See Federal (FECA) Procedure Manual, Part 6 -- *Debt Management, Initial Determinations in an Overpayment*, Chapter 6.300.4 (June 2009)

<sup>3</sup> 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides that its final decision shall contain findings of fact and a statement of reasons. See also *H.O.*, Docket No. 19-0198, *Order Remanding Case* (issued July 3, 2019).

<sup>4</sup> See FECA Transmittal No. 18-04 (issued September 2018).

compromised. OWCP's new procedures at Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.400.5(c)(4) (September 2018) provide in part that a final overpayment decision shall provide a discussion, including ... a summary of any conference held and conclusions drawn from it; consideration of waiver of recovery where the overpaid individual is found without fault; and, if the overpayment is recoverable, an appropriate collection plan.

As OWCP failed to provide findings pursuant to its procedures or legal rationale explaining the rescission of waiver of the overpayment, and has not explained why waiver of the overpayment could not be granted pursuant to its new procedures, the Board finds that the case must be remanded for a new preliminary determination which provides proper findings of fact and conclusions of law and affords appellant due process rights to seek waiver of recovery of the overpayment.

**IT IS HEREBY ORDERED THAT** October 29, 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: March 20, 2020  
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