

supporting financial documentation within 30 days. The preliminary determination was sent on May 24, 2019 to appellant's address of record.³

On June 6, 2019 OWCP received its May 24, 2019 preliminary determination, returned by the U.S. Postal Service as undeliverable and unable to forward.

By decision dated July 2, 2019, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$111,791.15. It denied waiver of recovery of the overpayment because there was no evidence to substantiate that recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP directed recovery of the overpayment by deducting \$826.00 every 28 days from appellant's continuing compensation payments.

The Board finds that this case is not in posture for decision as OWCP improperly issued the July 2, 2019 final overpayment decision.

OWCP's procedures require it to written notice informing the claimant of the fact and amount of an overpayment before seeking recovery or adjusting benefits.⁴ It must additionally advise the claimant of whether she is at fault in the creation of the overpayment,⁵ her right to challenge the fact or amount of the overpayment, her right to contest the preliminary finding of fault in the creation of the overpayment and, if applicable, her right to request a waiver of recovery of the overpayment.⁶

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 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 May 24, 2019 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. OWCP received the nondelivered preliminary overpayment determination on

³ The preliminary determination was also sent to the employing establishment and Capp Taylor, appellant's then authorized representative.

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.300.5 (September 2018); 20 C.F.R. § 10.431(a).

⁵ *Id.* at § 10.431(b).

⁶ *Id.* at § 10.431(d).

⁷ *S.B.*, Docket No. 19-0337 (issued February 19, 2020); *L.C.*, Docket No. 19-0320 (issued July 26, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁸ *Id.*

⁹ *S.B.*, *supra* note 7; *J.B.*, Docket No. 17-1164 (issued September 11, 2017). Despite receiving the returned mail as undeliverable, it made no further attempt to reissue the preliminary determination prior to issuing its July 2, 2019 decision.

June 6, 2019. 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.¹⁰ Because appellant had not received the May 24, 2019 preliminary overpayment determination, she was not afforded an opportunity to contest the fact or amount of the overpayment, or to request waiver of recovery and provide a completed Form OWCP-20 with supporting financial documentation.¹¹

As OWCP has not afforded appellant the procedural rights provided under its regulations, the Board finds that it improperly issued its final overpayment decision.¹² Consequently, the July 2, 2019 decision is hereby set aside. Accordingly,

IT IS HEREBY ORDERED THAT July 2, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: October 15, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *V.R.*, Docket No. 18-1117 (issued June 20, 2019).

¹¹ *Id.*

¹² *Id.*; see also *S.B.*, *supra* note 7.