

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

N.G., widow of T.G., Appellant)	
)	
and)	Docket No. 19-1482
)	Issued: September 17, 2020
U.S. COURTS, U.S. PROBATION & PRETRIAL SERVICES, Indianapolis, IN, Employer)	
)	

Appearances:
Jeffrey Macey, Esq., for the appellant¹
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 June 28, 2019 appellant, through counsel, filed a timely appeal from January 14 and 16, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as 19-1482.³

¹ 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.

² Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b) provides that a request for oral argument must be submitted in writing no later than 60 days after the filing of the appeal and specify the issue(s) to be argued and provide a statement supporting the need for oral argument. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose.

³ The Board notes that following the January 16, 2019 decision, OWCP received additional evidence and that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

The record in this case indicates that on July 18, 2018 appellant, the employee's widow, informed OWCP of a change-of-address from Indianapolis to Zionsville, Indiana.⁴ In correspondence dated September 30, 2019, she again informed OWCP of this new address. On November 8, 2018 OWCP issued a preliminary overpayment determination, mailed to the deceased employee at the Indianapolis, Indiana address. On December 3, 2018 it reissued the preliminary overpayment determination and mailed it to appellant at her correct address in Zionsville, Indiana.

In a mailing dated and postmarked December 26, 2018, appellant forwarded an overpayment action request form in which she requested a prerecoumment hearing, an overpayment questionnaire (Form CA-20), and financial information.

By decision dated January 14, 2019, OWCP denied appellant's request for a prerecoumment hearing as untimely filed. By decision dated January 16, 2019, it finalized its preliminary overpayment determination and found that appellant had received an overpayment of compensation in the amount of \$69,073.05, for which she was without fault. OWCP denied waiver of recovery of the overpayment and noted that the sum of \$773.56 would be withheld from appellant's continuing compensation payments every 28 days.

The Board finds that appellant's request for a prerecoumment hearing was timely filed. When issuing its November 8, 2018 preliminary overpayment determination, OWCP first mailed it to appellant's former Indianapolis, Indiana address, but then on December 3, 2018 reissued and mailed the preliminary determination to her correct address in Zionsville, Indiana. The Board has held that the timeliness of a request for a prerecoumment hearing is determined by the postmark date or other carrier's marking showing when the request was sent to OWCP.⁵ In this case, appellant's request was dated and postmarked December 26, 2018, within 30 days of December 3, 2018, when OWCP reissued the preliminary determination and mailed it to her correct address. As she requested a prerecoumment hearing within 30 days of the reissuance of OWCP's preliminary overpayment determination on December 3, 2018, the Board finds her December 26, 2018 request was timely. Thus, by its January 14, 2019 decision, the Board finds that OWCP improperly denied appellant's prerecoumment hearing request as untimely filed.

As OWCP improperly found appellant's request for a prerecoumment hearing was untimely filed, the Board finds that it also improperly issued a final overpayment decision on January 16, 2019. The case will be remanded to OWCP to conduct a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review, to be followed by any necessary further development and a *de novo* decision.⁶

⁴ Appellant is the widow of a deceased probation officer who was killed in the line of duty on September 26, 1986. She thereafter received FECA death benefits for herself and her two children.

⁵ *D.R.*, Docket No. 19-1885 (issued April 24, 2020); *see* 20 C.F.R. §§ 10.439, 10.616(a); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

⁶ *C.R.*, Docket No. 15-0525 (issued July 20, 2015).

IT IS HEREBY ORDERED THAT the January 16 and 14, 2019 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded to OWCP for further proceedings consistent with this order of the Board.⁷

Issued: September 17, 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

⁷ Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). The Board has exercised its discretion and, given the disposition of the case, denies the request, finding that the arguments on appeal have been addressed based on the case record.