

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

S.B., claiming as widow of S.B., Appellant)	
)	
and)	Docket No. 20-1099
)	Issued: July 8, 2021
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:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 28, 2020 appellant filed a timely appeal from an October 31, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1099.

This case has previously been before the Board.¹ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

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 the claim for right shoulder strain and major depression and paid the employee wage-loss compensation on the periodic rolls as of 2004.

On June 4, 2015 OWCP issued a preliminary determination 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 Social Security Administration (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.

¹ *Order Remanding Case*, Docket No. 18-1420 (issued June 20, 2019).

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). It allotted him 30 days to choose whether he wanted a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated July 7, 2015 OWCP finalized its preliminary overpayment determination.

Appellant's wife notified OWCP that the employee had passed away on July 15, 2015. The final overpayment determination was resent, addressed to the employee, by OWCP 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 Form OWCP-20 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.

On May 11, 2016 OWCP issued a new preliminary overpayment 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 recovery of the overpayment. She wrote that the employee's estate was valued at \$0.00 and she was still paying credit card debt that he owed. Appellant attached a Form OWCP-20 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.

On July 17, 2018 appellant filed an appeal with the Board. In an order dated June 20, 2019, the Board found in part that the evidence obtained from the Office of Personnel Management (OPM) was not the type of evidence required under OWCP procedures.² The Board remanded the case for further development consistent with OWCP's procedures.

Upon remand, in an e-mail dated June 25, 2019, OWCP contacted OPM, requesting information as to whether appellant was in receipt of OPM benefits and the amount paid.

In an e-mail dated August 28, 2019, OPM informed OWCP that appellant was in receipt of \$438.00 per month.

By decision dated October 31, 2019, OWCP again finalized the May 11, 2016 preliminary determination of a \$31,239.00 overpayment of compensation for the period January 1, 2006 through January 10, 2015. It determined that the estate was without fault in the creation of the

² *Id.*

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.

The Board, having duly considered the matter, finds that OWCP failed to follow its procedures with regard to collection of a deceased debtor's estate. OWCP is required to follow certain procedures to protect appellant in overpayment cases wherein it has knowledge that a beneficiary with an existing overpayment has died.³ In this case, the evidence of record does not substantiate the actions OWCP has taken to recover the overpayment debt through an offset from OPM benefits or through the Treasury Offset Program, prior to taking overpayment actions against the estate. The case shall, therefore, be remanded for OWCP to follow its procedures as outlined in Chapter 6.500.15.⁴ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the October 31, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 8, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

⁴ *Id.*; see also *P.H. (K.H.)*, Docket No. 19-1130 (issued November 19, 2020).