

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

_____)	
R.R., claiming as representative of the estate of)	
J.R., Appellant)	
)	
and)	Docket No. 18-0803
)	Issued: April 25, 2019
)	
SOCIAL SECURITY ADMINISTRATION,)	
DISTRICT OFFICE, San Juan, PR, Employer)	
_____)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

On March 5, 2018 appellant filed a timely appeal from a December 19, 2017 decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 18-0803.

OWCP accepted that on January 19, 1985 the employee slipped on a wet floor while in the performance of duty and sustained lumbosacral radiculitis and L5-S1 herniated nucleus pulposus. He stopped work on January 5, 1989 and OWCP placed him on the periodic rolls for temporary total disability beginning February 12, 1989. The employee was enrolled in optional life insurance (OLI) Parts A and B. On April 4, 2002 he elected to freeze the multiple of his Option B Additional Life Insurance when he reached age 65 on May 6, 2002. The employee noted the names and addresses of his beneficiaries, appellant and one other adult child, with their addresses in the continental United States.

On August 18, 2015 appellant advised OWCP that the employee passed away on July 25, 2015 and that she had been appointed executrix of his estate. OWCP terminated the employee's enrollment in Part A OLI retroactive to July 26, 2015.

In an August 16, 2017 memorandum to file, OWCP noted that it had failed to deduct OLI premiums from the employee's compensation from June 1, 2002 to July 25, 2015, the date of the employee's death, resulting in an overpayment of compensation in the amount of \$14,387.11.

In a November 15, 2017 preliminary notice of overpayment, OWCP notified the employee's estate that a preliminary determination had been made that the employee had been overpaid in the amount of \$14,387.11 due to the failure of OWCP to deduct OLI premiums from the employee's payments from June 1, 2002 to July 25, 2015, the date of the employee's death.

By decision dated December 19, 2017, OWCP found an overpayment of compensation in the amount of \$14,387.11 for which the employee was not at fault. It denied waiver of recovery of the overpayment as the representative failed to submit financial information as requested and directed the recovery of the overpayment by lump sum payment. The Board notes that both the preliminary notice of overpayment and the final overpayment decision were mailed to the deceased employee's address in Puerto Rico, even though the last known address of the executrix of his estate was in the continental United States.

The Board finds that OWCP failed to provide adequate facts and findings in support of its December 19, 2017 decision and that the case must be remanded to OWCP for further development. OWCP is required by statute and regulation to make findings of fact.¹

OWCP is required to follow certain procedures in overpayment cases wherein it has knowledge that a claimant with an existing overpayment has died. Its procedures for recovery from a deceased debtor's estate at the time of OWCP's December 19, 2017 decision provided that:

“(b) Upon learning that a claimant with an existing overpayment has died, the district office shall immediately contact the U.S. Office of Personnel Management (OPM) to determine the availability of any OPM benefits payable at the time of death that may be administratively offset, *e.g.*, basic employee death benefits, survivor annuity benefits or lump sum refund of the deceased employee's retirement contributions (5 C.F.R. § 831.1805). If such OPM benefits are available for offset, the district office must follow the OPM referral procedures set forth in Part 6.300.9.

“(i) Many state statutes provide that an unsecured debt may not be collected from an estate one year after the death of the decedent.

“(ii) As many states require publication of a notice to creditors, a written claim against the estate should generally be presented within four months from the date of death.”²

¹ 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 in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(e)(2)(b) (June 2009).

At the time of OWCP's December 19, 2017 decision, its procedures for recovery from a deceased debtor's estate also provided that "[o]nce the estate has been closed and the proceeds distributed, collection action must be terminated."³

The December 19, 2017 OWCP decision, which was mailed to the deceased employee's address in Puerto Rico, failed to provide findings as to whether OPM had been contacted to determine the availability of benefits for administrative offset. OWCP also failed to make findings as to whether appellant is the executrix of the estate, whether the employee's assets had been distributed, and whether the estate was closed.⁴

The case will be remanded to OWCP for further findings consistent with its procedures regarding debt collection from the Estate of a Deceased Claimant. After such further development, OWCP shall issue an appropriate final overpayment decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 19, 2017 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: April 25, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

³ *Id.* at Debt Liquidation, *Recovery from a Deceased Debtor's Estate*, Chapter 6.300.15 (May 2004).

⁴ *Id.*