

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

S.B., Appellant)	
)	
and)	Docket No. 19-0337
)	Issued: February 19, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Los Angeles, CA, 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
JANICE B. ASKIN, Judge

On November 30, 2018 appellant filed a timely appeal from an October 26, 2018 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-0337.²

By notice dated September 24, 2018, OWCP made a preliminary determination that an overpayment of \$5,269.14 was created for the period from February 1 through September 15, 2018 because appellant was paid compensation under the Federal Employees' Compensation Act³ (FECA) and the Social Security Administration (SSA) without an appropriate offset creating a prohibited dual benefit. It found that appellant was without fault in the creation of the overpayment for the period from February 1 to 3, 2018, but that she was at fault in the creation of the

¹ The Board notes 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.*

² Appellant also filed a timely request for oral argument in this case. By order dated September 5, 2019, the Board denied appellant's request for oral argument as oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument*, Docket No. 19-0337 (issued September 5, 2019).

³ 5 U.S.C. § 8101 *et seq.*

overpayment for the period February 4 through September 15, 2018. It informed her of her review rights and instructed her to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting documentation within 30 days. The preliminary determination was sent to appellant's address of record.

Although properly addressed, based on the information provided by appellant, the U.S. Postal Service returned OWCP's September 24, 2018 preliminary determination as undeliverable and unable to forward. OWCP received the returned mail on October 9, 2018.

By decision dated October 26, 2018, OWCP finalized its preliminary determination finding that an overpayment of \$5,269.14 was created for the period February 1 through September 15, 2018 because appellant was paid dual compensation under FECA and SSA without an appropriate offset.⁴

OWCP's procedures require that it provide written notice informing the claimant of the fact and amount of an overpayment before seeking recovery or adjusting benefits.⁵ It must additionally advise the claimant of whether she is at fault in the creation of the overpayment,⁶ 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.⁷

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.⁸ 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.⁹

The record in this case contains direct evidence of nondelivery of the September 24, 2018 preliminary determination.¹⁰ 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 returned, nondelivered preliminary overpayment determination on October 9, 2018. Despite receiving the notice as undeliverable, it made no further attempt to reissue the preliminary

⁴ OWCP overturned, in part, its preliminary finding on fault, finding that appellant was without fault in the creation of the overpayment for the entire period of the overpayment. However, it denied waiver of recovery of the overpayment because she had not responded to the overpayment recovery questionnaire or provided supporting financial documentation. OWCP directed recovery of the overpayment by deducting \$170.00 every 28 days from appellant's continuing compensation payments.

⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.300.5 (September 2018); 20 C.F.R. § 10.431(a).

⁶ *Id.* at § 10.431(b).

⁷ *Id.* at § 10.431(d).

⁸ *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).

⁹ *Id.*

¹⁰ *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

determination prior to issuing its October 26, 2018 decision. The Board finds that the returned envelope constitutes evidence of nondelivery sufficient to overcome the presumption of receipt.¹¹ Because appellant had not received the September 24, 2018 preliminary determination, she was not afforded an opportunity to challenge the fact and amount of overpayment and to request a waiver of recovery of the overpayment.¹²

As OWCP has not complied with the procedural rights afforded to appellant under its regulations, the Board finds that it improperly issued its final overpayment decision without proper notice.¹³ Accordingly,

IT IS HEREBY ORDERED THAT the October 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for proceedings consistent with this order of the Board.

Issued: February 19, 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

¹¹ *V.R.*, Docket No. 18-1117 (issued June 20, 2019); *M.U.*, Docket No. 09-0526 (issued September 14, 2009).

¹² *V.R.*, *id.*

¹³ *Id.*; *L.G.*, Docket No. 17-0004 (issued April 17, 2017).