

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

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| A.H., widow of D.H., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0798 |
| |) | Issued: December 13, 2024 |
| DEPARTMENT OF THE NAVY, NAVAL AIR |) | |
| FACILITY DETROIT, Detroit, MI, Employer |) | |
| |) | |

Appearances: *Case Submitted on the Record*
Audra B. Woods, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On July 24, 2024 appellant, through counsel, filed a timely appeal from an April 4, 2024 merit decision and a July 3, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0798.²

On August 10, 1993 the then 57-year-old employee filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained multiple fractures and brain and eye injuries when he fell off of an aircraft landing onto his head, shoulder and back while in the performance of duty.

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 The Board notes that, following the July 3, 2024 decision, OWCP received additional evidence. 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.*

OWCP accepted the claim for head contusion, fractured left radius/ulna, fractured left clavicle, comminuted displaced fracture left zygoma orbit maxilla with open reduction internal fixation with bone plate and wire suture, closed skull fracture, cerebral cysts, left cervical vertebra dislocation, diplopia, and cerebral artery occlusion.

On September 2, 2022 the employee's son notified OWCP that the employee had passed away on August 15, 2022.

On October 25, 2022 the Office of Personnel Management (OPM) informed OWCP that as a compensationner the employee was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic life insurance (BLI) and postretirement basic life insurance (PRBLI) coverage. The final base salary on which FEGLI was based was \$37,482.52. OPM informed OWCP that BLI should have been withheld at 50 percent reduction. It submitted an election form signed by the employee on June 3, 1994 indicating his election of Option C (family) with 50 percent reduction. OPM also informed OWCP that the commencing date for BLI was March 15, 1994.

In a preliminary overpayment determination dated November 14, 2022, OWCP notified the employee's estate that he had received an overpayment of compensation in the amount of \$7,607.90 because it failed to deduct PRBLI premiums from his FECA compensation for the period March 15, 1994 through August 15, 2022 at the proper rate. It provided its calculations on the amount of compensation paid during the period. OWCP further advised the employee's estate of its preliminary determination that he was without fault in the creation of the overpayment and requested that it complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, it advised the employee's estate that, within 30 days of the date of the letter, it could request a final decision based on the written evidence or a prercoupment hearing.

By letter dated December 9, 2022, counsel confirmed receipt of the November 14, 2022 preliminary determination and notified OWCP that there was no probate estate for the employee, nor any expectation that an estate would be opened. She enclosed a death certificate dated August 23, 2022, which noted that the employee passed away on August 15, 2022 and indicated that appellat was his widow.

By decision dated April 4, 2024, addressed to the employee's estate, OWCP finalized the November 14, 2022 preliminary overpayment determination. It found that the employee had received an overpayment of compensation in the amount of \$7,607.90 because it failed to properly deduct PRBLI premiums from his FECA wage-loss compensation for the period March 15, 1994 through August 15, 2022. OWCP further found that the employee was without fault in the creation of the overpayments but denied waiver of recovery. It required recovery of the overpayments in full.

On May 10, 2024 OWCP requested that OPM advise whether OPM was currently making any payments of basic employee death benefits, survivor annuity benefits, or any lump sum refund of the employee's retirement contributions for the employee's account with OPM.

In letters dated June 5 and 18, 2024, appellant, through counsel, requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review. In a Form OWCP-20 completed on June 5, 2024, appellant reported total monthly income of \$3,243.44 and total monthly expenses of \$2,242.73. She also reported a checking account balance of \$5,537.26, a savings account balance of \$11,489.30, and value of other personal property and other funds of \$158,394.70. She submitted supporting financial documentation.

By decision dated July 3, 2024, OWCP's Branch of Hearings and Review denied appellant's hearing request as it was not made within 30 days of the November 14, 2022 preliminary overpayment determination and was therefore untimely filed.

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 The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury Offset Program (TOP).³ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,⁴ including sending the complete referral package to the national office for final review and forwarding to the FMS.⁵

The evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include a referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. The case shall therefore be remanded to OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedure manual.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *L.P., widow of K.P.*, Docket No 22-0752 (issued August 4, 2023); *D.J.*, Docket No. 22-0012 (issued August 18, 2022).

IT IS HEREBY ORDERED THAT the April 4, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 13, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board