United States Department of Labor Employees' Compensation Appeals Board

J.R., Appellant))
and) Docket No. 12-986
U.S. POSTAL SERVICE, GRACIE STATION, New York, NY, Employer) Issued: November 13, 2012)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On April 3, 2012 appellant filed a timely appeal of a March 19, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision finding an overpayment of compensation in the amount of \$8,920.10 for the period December 7, 2008 through May 8, 2010 due to the under deduction of health benefits, basic life insurance and optional life insurance. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

This case has previously been before the Board and by decision dated September 22, 2011² the Board remanded the case to OWCP for a new preliminary determination and final decision following development of the issues of the period of the overpayment, the appropriate amount of overpayment, waiver of the recovery of the overpayment and if necessary, repayment of the overpayment.

Following the Board's September 22, 2011 decision, OWCP issued a new final decision only determining a new amount of the overpayment and the period of the overpayment. In the

¹ 5 U.S.C. § 8101 et seq.

² Docket No. 11-285 (issued September 22, 2011).

March 19, 2012 final overpayment decision, it stated that the appropriate amount of the overpayment was \$8,665.99 and that the period for the overpayment was December 8, 2008 through May 10, 2010. OWCP further stated:

"As advised in the original final determination of October 25, 2010, after carefully studying your case and fully considering any additional evidence or arguments submitted (you did provide [F]orm OWCP-20, with supporting financial documentation, as required), we have decided not to waive the overpayment, as the evidence in file does not suggest that you are entitled to waiver, nor that collection of the overpayment would defeat the purpose of the FECA, nor that you cannot repay the debt. The financial documentation and [F]orm OWCP-20 show income of \$4,976.39 and expenses of \$4,836.36, with a net income of \$140.02 per month. According to this office's procedures, your claim of hardship is not shown. An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. As such, we must consider that you have \$90.00 available, per month, for debt repayment.

"The overpayment is still being recovered in the manner stated in the enclosed Form EN2225 (as advised in the original final determination of October 25, 2010)...."

The Board finds that OWCP failed to follow the majority of the instructions issued by this Board in the September 22, 2011 decision remanding the case for additional development. As OWCP has not issued a new preliminary overpayment determination, appellant has not had the opportunity to submit new financial information and OWCP has not adequately evaluated appellant's current financial situation to determine whether waiver of recovery of the overpayment is appropriate.

On remand, OWCP should issue a new preliminary overpayment determination providing appellant with new appeal rights including the request for a prerecoupment hearing, and the opportunity to submit current financial information which OWCP will evaluate to properly determine whether the overpayment should be waived. OWCP shall insure that the record contains probative evidence supporting its findings regarding the amount of the overpayment and authorized documentation regarding the proper amount of the health and life insurance premiums for each specific year and specific period so that appellant may be able to determine if the calculation of the overpayment was correct. After this development consistent with this Order Remanding Case and the Board's September 22, 2011 decision, OWCP shall issue an appropriate final overpayment decision on the issues of amount, period, waiver and recovery of the overpayment which the Board previously determined exists.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2012 is set aside and the case remanded for further development consistent with this order of the Board.

Issued: November 13, 2012 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board