

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

C.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Melville, NY, Employer**

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**Docket No. 12-766
Issued: September 12, 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 February 23, 2012 appellant filed a timely appeal from a February 3, 2012 final overpayment decision of the Office of Workers' Compensation Programs (OWCP). The claim was docketed as No. 12-766.

The Board has duly considered the matter and finds that this case is not in posture for decision. In this case, by decision dated February 3, 2012, OWCP found that an overpayment of compensation in the amount of \$5,103.01 had been created for the period March 1, 2006 through December 17, 2011 because appellant received both Social Security Act (SSA) retirement benefits and wage-loss compensation under the Federal Employees' Compensation Act¹ (FECA), without appropriate offset being applied.² It found him at fault and noted that, although he

¹ 5 U.S.C. §§ 8101-8193.

² Appellant, a tractor trailer operator, sustained a right rotator cuff sprain/tear on May 26, 2004 while disconnecting a tractor from a trailer. He underwent arthroscopic repair on July 22, 2004 and returned to modified duty for four hours a day on March 19, 2005. By decision dated June 2, 2005, OWCP reduced appellant's compensation, based on his actual earnings for four hours a day.

referenced an April 22, 2008 letter in a response to the January 4, 2012 preliminary overpayment finding, the record did not contain such a letter.³

On appeal to the Board, appellant asserts that OWCP erred in its February 3, 2012 decision by not considering an April 22, 2008 letter which indicated that federal retirement offset was being deducted from his compensation. He attached a copy of the letter, found in OWCP file number xxxxxx220.⁴ The record in the instant claim contains correspondence from appellant's former attorney dated October 18 and November 19, 2006 in which the attorney referenced both claims: file number xxxxxx218, the instant case, and file number xxxxxx220. Appellant retired on December 22, 2006. In a September 17, 2007 letter, his attorney indicated that appellant had been receiving compensation under both claims.

The record forwarded to the Board includes evidence suggesting that appellant has two accepted claims and suggests that he was receiving FECA benefits under both claims. Claim number xxxxxx218 record, however, contains scant information regarding claim number xxxxxx220, especially regarding whether appellant is receiving FECA benefits under that claim. The Board therefore finds this case is not in posture for a decision, as the record before the Board is incomplete and would not permit an informed adjudication of the case by the Board. Thus, the case must be remanded to OWCP to combine the claim files. OWCP procedures provide for doubling claims when correct adjudication of the issues depends on frequent cross-reference between files.⁵ Upon remand, it should combine file number xxxxxx220 with the instant case, file number xxxxxx218. After combining the two records, OWCP should consider all relevant evidence regarding whether an overpayment of compensation was created and, if so, whether the amount was correct, and whether appellant was at fault in the creation of the overpayment and direct any further development deemed necessary. It should then issue an appropriate decision.

³ In response to the preliminary overpayment determination, appellant submitted an overpayment action request but did not submit an overpayment questionnaire.

⁴ The Board cannot consider this evidence as the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. *J.T.*, 59 ECAB 293 (2008).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

IT IS HEREBY ORDERED THAT the February 3, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: September 12, 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