

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

I.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 12-1683
Issued: January 25, 2013**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On August 6, 2012 appellant filed an application for review of an August 1, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which denied waiver of overpayments in the amounts of \$5,565.55 and \$1,279.14.

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In a previous appeal, the Board found that OWCP properly determined that appellant received a \$5,565.55 overpayment for the period February 21, 2008 to August 18, 2009; and \$1,279.14 for the period September 24, 2009 to January 15, 2011.¹ However, the Board found that the case was not in posture for a decision regarding his eligibility for waiver of the overpayments. The Board found that an OWCP hearing representative did not consider all of the financial documentation submitted by appellant. The Board found that there were several discrepancies. For example, the Board noted that it was not clear why the hearing representative allowed only \$100.00 per month for food and nothing for clothing, when appellant testified at his hearing that he spent \$200.00 to \$400.00 a month on food and \$100.00 to \$200.00 a month on clothing. The Board also noted that, beginning July 31, 2011, appellant's net compensation was reduced to \$2,294.96 every four weeks. The Board found that further development was needed to determine whether appellant's monthly income exceeded his expenses and whether recovery of the overpayment would cause undue hardship. The Board set

¹ Docket No. 11-1868 (issued June 5, 2012).

aside OWCP's August 4, 2011 decision on the issue of waiver and remanded the case for further development as necessary on the issue of whether appellant was entitled to waiver.

On remand, the hearing representative merely reviewed the previous financial evidence and hearing testimony in finding that waiver of the overpayment was not warranted. He did not request updated evidence of appellant's financial status to address the discrepancies noted in the Board's prior decision. The hearing representative should have provided appellant with a new overpayment recovery questionnaire and allowed him an opportunity to complete this and provide appropriate supporting evidence documenting his current financial status. The Board has held that OWCP must rely on current financial evidence when determining eligibility for waiver of an overpayment.² For this reason, the case will be remanded to OWCP to further consider appellant's eligibility for waiver. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision on the matter.

IT IS HEREBY ORDERED THAT the August 1, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

² See C.S., Docket No. 12-313 (issued October 23, 2012).