

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

T.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Warren, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-509
Issued: May 13, 2013**

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 January 2, 2013 appellant filed a timely appeal of an Office of Workers' Compensation Programs' (OWCP) decision dated September 20, 2012. The appeal was docketed as No. 13-509.

The Board issued a decision dated July 19, 2012 regarding two overpayments of compensation.¹ With respect to an \$11,936.00 overpayment for the period April 1 to August 28, 2010, the Board affirmed fact and amount of overpayment, but remanded the case for proper findings as to fault in creating the overpayment.² The September 20, 2012 OWCP decision states that appellant was at fault "because of the following" and lists all of the fault standards under 20 C.F.R. § 10.433: made an incorrect statement as to a material fact which she knew or should have known to be incorrect, failed to provide information which she knew or should have known to be material, and accepted a payment which she knew or should have known was incorrect. The only additional statement as to fault is that "the conviction for fraud concerning OWCP compensation benefits is now final."

¹ Docket No. 12-7 (issued July 19, 2012).

² The Board also remanded the case with respect to the amount of a declared \$1,589.64 overpayment resulting from an incorrect pay rate. The September 20, 2012 OWCP decision on appeal states that issues regarding this overpayment were considered in a separate correspondence.

The overpayment in this case occurred because appellant continued to receive compensation after April 1, 2010, when an Ohio Municipal Court entered a guilty verdict with respect to false information provided on compensation EN1032 forms. The conviction for fraud was previously of record and the overpayment was based on 5 U.S.C. § 8148(a), as discussed in the prior Board decision. It is important to note that the overpayment period did not begin until the guilty verdict was entered. The guilty verdict itself relates to actions prior to April 1, 2010. The fault issue regarding receipt of compensation from April 1 to August 28, 2010 is a separate issue. As to compensation from April 1 to August 28, 2010, if there was an incorrect statement or a failure to provide material information, OWCP must explain what incorrect statement was made or information omitted, and explain why appellant knew or should have known the information was incorrect or material. If appellant is found to have accepted payments covering the period April 1 to August 28, 2010 that she knew or should have known were incorrect, OWCP should explain what specific evidence established appellant knew or should have known the payments were incorrect.

Since OWCP failed to make proper findings as directed by the Board, the case will be remanded to OWCP. On return of the case record it should make specific findings as to fault and waiver. After such further development as OWCP deems necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2012 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: May 13, 2013
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