

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

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**T.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 14-264  
Issued: April 15, 2014**

*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  
ALEC J. KOROMILAS, Alternate Judge

On November 20, 2013 appellant filed a timely appeal from a September 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she received a \$1,179.41 overpayment of compensation and that she was not entitled to waiver of the overpayment.<sup>1</sup> The appeal was docketed as No. 14-264.

The Board has reviewed the case and finds that it is not in posture for decision. In a June 17, 2013 letter, OWCP notified appellant of its preliminary determination that she received a \$1,179.41 overpayment of compensation because she continued to receive total disability compensation after she returned to work on April 27, 2013 for one hour per day. It also informed her of its preliminary determination that she was without fault in creating the overpayment. OWCP further advised appellant that she could request, within 30 days, a telephone conference with OWCP, a final decision based on the written evidence or a prerecoumpment hearing before the Branch of Hearings and Review. In an overpayment action request form, received by OWCP on July 2, 2013, appellant requested a telephone conference with OWCP regarding the preliminary determination. She checked a box indicating that she

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<sup>1</sup> OWCP accepted that on November 17, 2012 appellant, a mail processing clerk, sustained several right foot and ankle injuries, including contusions, abrasions, tenosynovitis and Achilles tendinitis. She received total disability compensation on the periodic rolls.

believed the overpayment occurred through no fault of her own and that she was requesting waiver of recovery of the overpayment. In a September 27, 2013 decision, OWCP finalized its preliminary determinations that appellant received a \$1,179.41 overpayment of compensation and that she was without fault in the creation of the overpayment. It further found, without explanation, she was not entitled to waiver of the overpayment.<sup>2</sup>

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of FECA's implementing regulations provides that, before seeking recovery of an overpayment, OWCP will advise a claimant in writing that the overpayment exists and the amount of the overpayment.<sup>3</sup> The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>4</sup> Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.<sup>5</sup> Lastly, the preliminary notice must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.<sup>6</sup>

On June 17, 2013 OWCP informed appellant of its preliminary determinations that she received a \$1,179.41 overpayment of compensation and that she was without fault in the creation of the overpayment. It notified her of her procedural rights, including the right to request a telephone conference within 30 days. On July 2, 2013 appellant made a timely request for a telephone conference and submitted an overpayment recovery questionnaire. OWCP, however, did not conduct a telephone conference before issuing its final overpayment decision. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged overpayment.<sup>7</sup>

The Board finds that this case is not in posture for a decision with regard to the overpayment of compensation and the case will be remanded for a timely proper response to appellant's request for a telephone conference. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

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<sup>2</sup> OWCP stated, "You are without fault in the overpayment however you have not provided information to refute the amount of the overpayment or the finding of without fault. A waiver could not be considered at this present time."

<sup>3</sup> 20 C.F.R. § 10.431(a).

<sup>4</sup> *Id.* at § 10.431(b).

<sup>5</sup> *Id.* at § 10.431(c).

<sup>6</sup> 20 C.F.R. § 10.431(d).

<sup>7</sup> *See Scherrie L. Stanley*, 53 ECAB 433 (2002).

**IT IS HEREBY ORDERED THAT** the September 27, 2013 decision of the Office of Workers' Compensation Programs be set and the case remanded to OWCP for further development consistent with this order of the Board.

Issued: April 15, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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