

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

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**D.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer**

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**Docket No. 11-650  
Issued: September 28, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On January 19, 2011 appellant filed an application for review of a January 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding an overpayment of compensation for which he was at fault. The appeal was docketed as number 11-650.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. On December 3, 2010 OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$140,814.99 because he received wage-loss compensation for periods which he had previously received schedule award payments.<sup>1</sup> It advised appellant that he could request a telephone conference, a final decision based on the written evidence only, or a hearing within 30 days of the date of the letter, if he disagreed that the overpayment occurred, if he disagreed with the amount of overpayment, if he believed that the overpayment occurred through no fault of his own, or if he believed that recovery of the overpayment should be waived.

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<sup>1</sup> On July 18, 2006 appellant received a schedule award for 50 percent permanent impairment of both lower extremities for the period May 1, 2006 through November 6, 2011. He opted to receive a lump-sum payment and acknowledged that he would not receive any further monetary benefits until the expiration of his schedule award. Appellant's monthly award was not terminated and he continued to receive an award every 28 days until October 23, 2010, creating an overpayment of \$140,814.99.

Appellant signed an overpayment recovery questionnaire on December 21, 2010. In an accompanying form dated December 21, 2010, appellant requested a telephone conference on the fact and amount of the overpayment, as well as the issue of fault. There is no evidence of record that a telephone conference was conducted, or that appellant withdrew his request for a telephone conference. By decision dated January 6, 2011, OWCP finalized its December 3, 2010 preliminary overpayment determination. It additionally found that appellant was at fault in the creation of the overpayment and thus not eligible for waiver.

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of Federal Employees' Compensation Act's implementing regulations provide 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>2</sup> The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>3</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>4</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>5</sup> The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a precoupment hearing requested within 30 days.<sup>6</sup>

On December 3, 2010 OWCP informed appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$140,814.99. It further advised him of its preliminary determination that he was at fault in the creation of the overpayment. OWCP notified him that he could request a telephone conference, a final decision based on the written evidence or a hearing within 30 days, if he wished to contest the existence or amount of the overpayment or request waiver of the overpayment. On December 21, 2010 appellant made a timely request for a telephone conference. OWCP, however, did not conduct a telephone conference, as requested, before issuing its final overpayment decision. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged overpayment.

The Board finds that this case is not in posture for a decision with regard to the overpayment of compensation, as OWCP's January 6, 2011 overpayment decision was improperly issued. The case will be remanded for a 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> 20 C.F.R. § 10.431(a).

<sup>3</sup> *Id.* at § 10.431(b).

<sup>4</sup> *Id.* at § 10.431(c).

<sup>5</sup> *Id.* at § 10.431(d).

<sup>6</sup> *Id.* at § 10.432.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' January 6, 2011 overpayment decision be set aside and the case is remanded for further development consistent with this order of the Board.

Issued: September 28, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board