

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

C.P., Appellant

and

**U.S. POSTAL SERVICE, ENERGY CENTER
STATION, Lafayette, LA, Employer**

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**Docket No. 12-197
Issued: June 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
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On October 28, 2011 appellant filed a timely appeal from a May 3, 2011 final overpayment decision of the Office of Workers' Compensation Programs (OWCP). The claim was docketed as No. 12-197.

The Board has duly considered the matter and notes that in the case of *William A. Couch*,¹ the Board held that, when adjudicating a claim, OWCP is obligated to consider all relevant evidence properly submitted by a claimant and received by OWCP before the final decision is issued. By letter dated March 23, 2011, OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$24,739.26 for the period January 21, 2004 to April 2, 2007 because she was paid compensation at a rate of 40 hours per week instead of a 30 hours per week rate, to which she was entitled. OWCP found appellant not at fault in the creation of the overpayment. Appellant was provided an overpayment action request form and an overpayment questionnaire. On April 20, 2011 she submitted the overpayment action request, overpayment questionnaire and additional financial information. This was received by OWCP on April 26, 2011. By decision dated May 3, 2011, OWCP finalized the preliminary overpayment decision, finding that appellant received an overpayment in compensation in the amount of \$24,439.26 and, while she was not at fault, she

¹ 41 ECAB 548 (1990); *see Willard McKennon*, 51 ECAB 145 (1999).

was not entitled to waiver of the overpayment because she did not respond to the preliminary decision. Appellant was informed that she should begin monthly payments of \$700.00.²

In its final overpayment decision dated May 3, 2011, OWCP indicated that appellant had not responded to the preliminary finding of March 23, 2011. Appellant submitted additional evidence, received by OWCP on April 26, 2011. On the overpayment action request, she asserted that she was working more than 40 hours a week before the employment injury. Appellant also submitted an overpayment questionnaire and additional financial information relevant to the issue of whether any overpayment should be waived. This evidence and argument were not considered by OWCP when rendering the May 3, 2011 decision. Thus, the case must be remanded for OWCP to review the evidence submitted on April 26, 2011, to be followed by an appropriate decision regarding whether an overpayment of compensation was created.

IT IS HEREBY ORDERED THAT May 3, 2011 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to OWCP for proceedings consistent with this order of the Board.

Issued: June 12, 2012
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

² At the time the May 3, 2011 decision was rendered, appellant was not receiving wage-loss compensation.