

limited to the evidence which was before OWCP at the issuance of the final decision.³ Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decision, the Board is unable to properly “consider and decide” the overpayment issue in this case. The March 5, 2012 OWCP decision must be set aside and the case remanded to OWCP for reconstruction and proper assemblage of the record, to be followed by an appropriate merit decision pursuant to 5 U.S.C. § 8128(b)(1) to protect appellant’s appeal rights.

IT IS HEREBY ORDERED THAT the March 5, 2012 decision of the Office of Workers’ Compensation Programs be set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: October 12, 2012
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

³ See *supra* note 1.