

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, GREATER BOSTON
PERFORMANCE CLUSTER, Boston, MA,
Employer**

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**Docket No. 12-1782
Issued: January 25, 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
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On August 23, 2012 appellant filed a timely appeal from an August 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she received a \$5,564.20 overpayment of compensation and that she was at fault in its creation.¹ The appeal was docketed as No. 12-1782.

The Board has reviewed the case and finds that it is not in posture for decision. On June 27, 2012, OWCP notified appellant of its preliminary determination that she received a \$5,564.20 overpayment of compensation because she received dual benefits between May 1, 2011 and June 2, 2012 from the Federal Employees Retirement System (FERS) and the Social Security Administration (SSA). It also informed appellant of its preliminary determination that she was at fault in the creation of the overpayment. OWCP further advised her that she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing within 30 days of the date of its preliminary determination letter.

¹ OWCP accepted that on September 21, 2005, appellant, a rural carrier, sustained sprains of her right shoulder and upper arm and abrasions/friction burns of her right elbow, forearm and wrist. Appellant received compensation for periods of disability.

In an overpayment action request form received by OWCP on July 13, 2012, appellant requested a prerecoupment hearing regarding the preliminary overpayment determination.² Appellant checked a box indicating that she believed the overpayment occurred through no fault of her own and that she was requesting waiver of recovery of the overpayment. She asserted that she had been told that she could collect FERS and SSA benefits at the same time.

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of FECA'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.³ The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁴ Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.⁵ 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.⁶ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a prerecoupment hearing requested within 30 days.⁷

On June 27, 2007 OWCP informed appellant of its preliminary determination that she was at fault in the creation of a \$5,564.20 overpayment of compensation. It notified her of her procedural rights, including the right to request a prerecoupment hearing. On July 13, 2012 appellant made a timely request for a prerecoupment hearing. OWCP, however, did not conduct a hearing before issuing its final overpayment decision. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged overpayment.⁸

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 proper response to appellant's request for a prerecoupment hearing. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

² Appellant also checked a box indicating that she was open to the option of participating in a teleconference if OWCP deemed her case suitable for this form of hearing.

³ 20 C.F.R. § 10.431(a).

⁴ *Id.* at § 10.431(b).

⁵ *Id.* at § 10.431(c).

⁶ *Id.* at § 10.431(d).

⁷ *Id.* at § 10.432.

⁸ *See Scherrie L. Stanley*, 53 ECAB 433 (2002).

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 1, 2012 decision be set aside and the case remanded to OWCP for further development consistent with this order of the Board.

Issued: January 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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