

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

E.C., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer

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**Docket No. 14-588
Issued: July 1, 2014**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On January 17, 2014 appellant filed a timely appeal from a January 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that he was at fault in creating an overpayment of compensation. The Board docketed the appeal as No. 14-588.

On prior appeal, by decision dated December 3, 2013, the Board found that appellant received an overpayment of compensation in the amount of \$56,316.66 for the period March 1, 2009 to February 9, 2013 because he received compensation from OWCP after he elected retirement benefits from the Office of Personnel Management (OPM).¹ The Board further determined, however, that he was not at fault in creating the overpayment. The Board noted that appellant had not received any payment from OPM during the period of the overpayment of compensation. The Board thus found that he had not accepted a payment that he knew or should

¹ Docket No. 13-1307 (issued December 3, 2013). OWCP accepted that on July 29, 1985 appellant, then a 30-year-old letter carrier, sustained acute lumbar strain and a herniated L5 disc in the performance of duty. In decisions dated October 21, 2009 and March 10, 2011, the Board affirmed OWCP decisions denying his request for reconsideration of its finding that he did not establish an employment-related recurrence of disability beginning April 16, 2003 as the request was untimely and did not demonstrate clear evidence of error. Docket No. 09-435 (issued October 21, 2009); Docket No. 10-1278 (issued March 10, 2011).

have known to be incorrect.² The Board remanded the case for consideration of waiver of recovery of the overpayment.

On remand, by decision dated January 6, 2014, OWCP again found that appellant was at fault in creating the \$56,631.66 overpayment of compensation for the period March 1, 2009 to February 9, 2013. It determined that, while he had not received a payment from OPM at the time of its preliminary fault determination, it had advised him on April 16, 2013 that he had the responsibility to pay the debt upon receipt of the money from OPM. OWCP noted that appellant had received payment from OPM at the time it issued the final overpayment determination.

The Board, having reviewed the case record, finds that the case is not in posture for decision. The Board has final authority to determine questions of law and fact. The Board's determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director of OWCP.³ Otherwise there could be no finality of decisions; the whole appeals procedure would be nullified and questions would remain moot.⁴

Accordingly, as OWCP failed to follow the Board's directive in its December 3, 2013 decision to consider waiver of recovery of the overpayment, the case must be remanded to OWCP for the action described in the Board's December 3, 2013 decision. Following this and any further development deemed necessary, it should issue a decision regarding whether recovery of the overpayment should be waived.

² The Board cited *Franklin L. Bryan*, 56 ECAB 310 (2005). In *Bryan*, OWCP found that the claimant was at fault in creating an overpayment of compensation from July 7 to September 7, 2002 because he received benefits from OWCP and OPM for the same time period. The Board noted that he elected OPM disability retirement benefits on July 2, 2002 but OWCP continued to pay him compensation until September 7, 2002. The claimant did not receive payment from OPM during the period in question. The Board determined that as he had not received benefits from OPM from July 7 to September 7, 2002, he did not receive a dual benefit when OWCP paid him compensation during this period as he had not accepted payments that he knew or should have known were incorrect. The Board stated, "Although [the claimant] was generally aware that he could not simultaneously receive OPM benefits and workers' compensation payments, no payment was made by OPM during the period in question." It thus found that he was not at fault in creating the overpayment.

³ See *Paul Raymond Kuyoth*, 27 ECAB 498 (1976); *Anthony Greco*, 3 ECAB 84 (1949); see also *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed).

⁴ See *Anthony Greco*, *supra* note 3.

IT IS HEREBY ORDERED THAT the January 6, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 1, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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