

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

_____)
A.W., Appellant)

and)

DEPARTMENT OF THE NAVY,)
PORTSMOUTH NAVAL SHIPYARD,)
Portsmouth, NH, Employer)

_____)

Docket No. 13-1429
Issued: May 23, 2014

Appearances:
Marshall J. Tinkle, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On May 29, 2013 appellant filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated May 15, 2013. The appeal was docketed as No. 13-1429.

This is the second appeal before the Board. Appellant, a 46-year-old pipefitter, filed a claim for benefits on January 26, 2004, which OWCP accepted for lumbar strain and thoracic strain. He requested a schedule award based on a partial loss of use of his left lower extremity. By decision dated June 24, 2010, OWCP granted appellant a schedule award for a nine percent permanent impairment of the left lower extremity, for the period September 4, 2009 to March 4, 2010, for a total of 25.92 weeks of compensation; based on a weekly compensation rate of \$390.13, this amounted to a total award of \$11,587.25. By decision dated September 20, 2010, it modified the June 24, 2010 decision, finding that he had a zero percent impairment of the left lower extremity under the sixth edition of the American Medical Associations, *Guides to the Evaluation of Permanent Impairment*. On September 20, 2010 OWCP issued a preliminary notice that an overpayment in the amount of \$11,587.25 had occurred, representing the schedule award paid from March 4, 2009 to September 9, 2010. It found that appellant was without fault in creating the overpayment and allowed him 30 days to challenge the overpayment or request a recoupment hearing.

On September 25, 2010 appellant completed the overpayment questionnaire and checked a box indicating that, if an overpayment did occur, he was entitled to waiver on the grounds that recovery of the overpayment would be against equity and good conscience. He listed his monthly income as \$2,887.00 and monthly expenses as \$3,422.00 and submitted numerous financial documents and tax returns in support of his request for waiver of the overpayment. By decision dated April 22, 2011, OWCP found that the June 24, 2010 schedule award had been rescinded, not modified. In a decision dated August 21, 2012, the Board affirmed OWCP's April 22, 2011 decision rescinding appellant's schedule award.¹ By decision dated April 2, 2013, OWCP denied modification of its previous schedule award decisions.²

By decision dated May 15, 2013, OWCP finalized the preliminary overpayment determination. It found that appellant was not entitled to waiver of the overpayment. OWCP did not make any findings, merely issuing a summary statement denying waiver. It did not consider appellant's responses to the overpayment questionnaire or make findings pertaining to his contention that payment of the overpayment would be against equity and good conscience.

Section 20 C.F.R. § 10.126 requires OWCP to issue a decision containing findings of fact and a statement of reasons.³ OWCP erred in its May 15, 2013 decision by failing to give proper consideration to appellant's contentions and the evidence he submitted, which was relevant to the instant issue in this case; *i.e.*, whether he was entitled to waiver of the overpayment because repayment would be against equity and good conscience. The instant record reflects that OWCP received a list of monthly income and expenses, in addition to numerous financial documents in support of the request for waiver of the overpayment. OWCP issued a summary denial of the request for waiver of the overpayment but provided no reasons for its decision. It made no findings of fact regarding the information appellant submitted.

As OWCP failed to consider appellant's evidence to make a detailed findings and state the reasons supporting its May 15, 2013 decision, the Board finds that the appeal docketed as No. 13-1429 must be set aside and remanded for reconsideration of the issue of whether he was entitled to waiver of the overpayment in the amount of \$11,587.25, pursuant to the standards set out in section 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

¹ Docket No. 11-1915 (issued August 21, 2012).

² The Board notes that, subsequent to this decision, OWCP's hearing representative affirmed the April 2, 2013 decision. Appellant filed an appeal to the Board challenging OWCP's denial and rescission of a schedule award, in a claim separate from the instant appeal. This appeal, Docket No. 14-199, is currently pending before the Board.

³ 20 C.F.R. § 10.126.

IT IS HEREBY ORDERED THAT the May 15, 2013 decision of the Office of Workers' Compensation Programs be set aside and remanded for reconsideration.⁴

Issued: May 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁴ Richard J. Daschbach, Chief Judge, who participated in the preparation of this order, was no longer a member of the Board after May 16, 2014.