

On August 16, 2013 appellant telephoned OWCP (or OWCP called her back) to advise that she could not pay anything on the overpayment because she was not back at work.

The Board finds that this case is not in posture for decision. Extensive due process rights attach to any attempt by OWCP to recoup benefits already paid, even if paid in error.³ After giving appellant notice that an overpayment occurred and that she was not at fault in the matter, making her eligible for waiver, appellant requested waiver and exercised her right to a telephone conference with OWCP in lieu of a hearing before an OWCP hearing representative. That conference, it appears, never took place. The record shows no scheduling or preparation and no memorandum of conference. The one-sentence report of telephone contact on August 16, 2013 cannot be confused with a procedural formal telephone conference, in lieu of a hearing before an OWCP hearing representative, on the issue of waiver.⁴ Accordingly, the Board finds that OWCP issued a final decision denying waiver of recovery of the overpayment without providing appellant due process.

The Board will remand the case to OWCP to correct this error. Following such development as may be necessary to facilitate the outstanding request for a formal telephone conference, including a current overpayment recovery questionnaire and supporting financial documentation, OWCP shall issue an appropriate final decision on appellant's request for waiver.⁵

³ See generally FECA Circular No. 82-48, *Overpayments and Waiver* (December 1, 1982); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Overpayment Overview*, Chapter 6.100.3k (May 2004).

⁴ See generally Federal (FECA) Procedure Manual, Part 2 -- Claims, *Conferences*, Chapter 2.500 (September 2011).

⁵ See *Jimmie R. Fornero*, Docket No. 99-875 (issued January 16, 2001) (remanding the case to OWCP to consider the claimant's request for a telephone conference, as he was not provided the opportunity to present testimonial evidence regarding his request for waiver).

IT IS HEREBY ORDERED THAT the August 16, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.⁶

Issued: May 5, 2014
Washington, DC

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

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁶ OWCP's October 30, 2013 nonmerit decision denying a 5 U.S.C. § 8124(b) hearing following a final overpayment decision is rendered moot.