

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

_____)	
M.P., Appellant)	
)	
and)	Docket No. 16-1325
)	Issued: November 2, 2016
U.S. POSTAL SERVICE, POST OFFICE, Gansevoort, NY, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Lawrence Elmen, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On June 10, 2016 appellant, through counsel, filed a timely appeal of a December 21, 2015 decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 16-1325.

The Board has reviewed the evidence on appeal and finds the case must be remanded to OWCP. On November 17, 2015 OWCP issued a preliminary determination that an overpayment of \$95,128.32 was created from July 27, 2009 to October 23, 2011. It found appellant had failed to disclose self-employment earnings as required on EN-1032 forms, and that he was at fault in creating the overpayment. The preliminary determination included an OWCP-20 overpayment recovery questionnaire and overpayment actions that could be requested, including a request for a telephone conference.

By decision dated December 21, 2015, OWCP finalized its preliminary determination of a \$95,128.32 overpayment of compensation. It asserted that "no response has been received to the preliminary decision."

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

On appeal, counsel argues that OWCP failed to properly consider evidence that was submitted in response to the November 17, 2015 preliminary determination. A review of the record indicates that on December 21, 2015, as established by the received date in the Integrated Federal Employees' Compensation System, OWCP received additional evidence. This evidence included a request for a telephone conference dated December 16, 2015, and a completed OWCP-20 overpayment recovery questionnaire dated December 16, 2015.

It is well established that OWCP must review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.² This includes evidence that was received on the same day as the issued decision.³ As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁴

The record indicates that OWCP received relevant evidence on December 21, 2015, the date of the final decision. OWCP did not review the evidence, and specifically indicated that no response to the preliminary determination had been received. Accordingly, the case will be remanded to OWCP to properly review the evidence of record. After such further development as is deemed necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 21, 2015 is set aside and the case remanded for further action consistent with this order of the Board.

² *William A. Couch*, 41 ECAB 548 (1990).

³ *Patsy R. Tatum*, 44 ECAB 490 (1993); *see also Linda Johnson*, 45 ECAB 439 (1994).

⁴ *Id.*

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Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board