

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

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<b>I.R., Appellant</b>	)	
	)	<b>Docket No. 18-0088</b>
<b>and</b>	)	<b>Issued: April 9, 2018</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Washington, DC, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

On October 16, 2017 appellant filed a timely application for review from a September 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 18-0088.

The Board has duly considered the matter and finds that this case is not in posture for decision and must be remanded to OWCP.

By notice dated August 7, 2017, OWCP advised appellant of its preliminary determination that she had received a \$6,604.16 overpayment of compensation for the period July 1, 2016 to July 22, 2017 because she received prohibited dual benefits in the form of wage-loss compensation under FECA and benefits under the Social Security Administration without an appropriate offset being made. It also made a preliminary determination that she was at fault in the creation of the overpayment as she was aware or should have reasonably been aware that her compensation payments had been paid incorrectly. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a preresoupment hearing.

In an overpayment action request dated August 30, 2017 and received by OWCP on September 5, 2017, appellant checked a box requesting a telephone conference. She also 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. Appellant provided arguments with respect to the overpayment issues, as well as, a completed Form OWCP-20 indicating her total monthly income and expenses and a SSA benefit statement.

By decision dated September 25, 2017, OWCP finalized the preliminary determination of a \$6,604.16 overpayment of compensation. It determined that appellant was not at fault in the creation of the overpayment because she was not aware or could not have reasonably been aware that she was not entitled to the payments she received. However, OWCP denied waiver of recovery because she had not submitted any financial documentation to support her claimed monthly expenses. It required repayment of the overpayment by deducting \$150.00 from appellant's continuing compensation payments every 28 days.

OWCP is required to follow certain procedures in overpayment cases. 20 C.F.R. § 10.431 provides that, before seeking recovery of an overpayment, it will advise a claimant in writing that the overpayment exists, and the amount of the overpayment.<sup>1</sup> The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>2</sup> Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.<sup>3</sup> 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.<sup>4</sup> The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a preresoupment hearing requested within 30 days.<sup>5</sup>

On August 7, 2017 OWCP informed appellant of its preliminary determination that she received a \$6,604.16 overpayment of compensation, and that she was without fault in the creation of the overpayment. It notified her of her procedural rights, including the right to request a telephone conference within 30 days. On September 5, 2017 appellant made a timely request for a telephone conference and submitted a Form OWCP-20 overpayment recovery questionnaire. OWCP, however, did not conduct a telephone conference before issuing its final overpayment decision. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged overpayment.<sup>6</sup>

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<sup>1</sup> 20 C.F.R. § 10.431(a).

<sup>2</sup> *Id.* at § 10.431(b).

<sup>3</sup> *Id.* at § 10.431(c).

<sup>4</sup> *Id.* at § 10.431(d).

<sup>5</sup> *Id.* at § 10.432.

<sup>6</sup> *See Scherrie L. Stanley*, 53 ECAB 433 (2002).

Accordingly, the case will be remanded to OWCP to provide appellant a telephone conference. Following this and such other development as OWCP deems necessary, it shall issue an appropriate merit decision on the overpayment issues.

**IT IS HEREBY ORDERED THAT** the September 25, 2017 of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: April 9, 2018  
Washington, DC

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

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

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