



fault in creating the overpayment, and that she was therefore not entitled to waiver. It indicated that she had not responded to its preliminary notice of overpayment. A review of the record, however, demonstrates that on October 25, 2016 OWCP received appellant's request for a telephone conference and a completed overpayment recovery questionnaire (Form OWCP-20).

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.<sup>2</sup> 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.<sup>3</sup>

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of FECA's implementing regulations provides that, before seeking recovery of an overpayment, OWCP shall advise a claimant in writing that the overpayment exists and the amount of the overpayment.<sup>4</sup> The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>5</sup> Additionally, OWCP is obliged to advise the individual of her right to inspect and copy the government records relating to the overpayment.<sup>6</sup> Lastly, the preliminary notice must inform the individual of 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>7</sup>

As noted above, on October 25, 2016, appellant made a timely request for a telephone conference and submitted an 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>8</sup>

Accordingly, the case is not in posture for a decision and the case will be remanded for a timely proper response to appellant's request for a telephone conference. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

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<sup>2</sup> *William A. Couch*, 41 ECAB 548 (1990).

<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 10.431(a).

<sup>5</sup> *Id.* at § 10.431(b).

<sup>6</sup> *Id.* at § 10.431(c).

<sup>7</sup> *Id.* at 10.431(d).

<sup>8</sup> *See Jimmie R. Fornero*, Docket No. 99-0875 (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); *see also Scherrie L. Stanley*, 53 ECAB 433 (2002).

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 27, 2016 is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: February 8, 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