

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

M.K., Appellant)	
)	
and)	Docket No. 18-0714
)	Issued: February 5, 2019
DEPARTMENT OF HEALTH & HUMAN)	
SERVICES, Rockville, MD, Employer)	
)	

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 January 30, 2018 appellant filed a timely appeal from an August 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 18-0714.

The Board has duly considered the matter and finds that the case must be remanded to OWCP.

On July 3, 2017 OWCP issued a preliminary notice that appellant received an overpayment of compensation in the amount of \$71,799.39 as she no longer had an eligible dependent beginning July 25, 2000, but had continued to receive wage-loss compensation at the augmented rate through April 1, 2017. It also informed her of its preliminary determination that she was at fault in creation of the overpayment. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20). 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 precoupment hearing. By decision dated August 2, 2017, OWCP found that appellant had received an overpayment of compensation in the amount of \$71,799.39, as she had received wage-loss compensation at the augmented rate without an eligible dependent from July 25, 2000 through April 1, 2017. It further found that appellant was at fault in the creation of the overpayment of compensation as she knew or should have known that she was receiving compensation to which she was not entitled. OWCP also ordered recovery of the overpayment of compensation by withholding \$400.00 every 28 days

from appellant's continuing wage-loss compensation benefits. It indicated that she had not responded to its preliminary notice of overpayment. A review of the record, however, demonstrates that on August 1, 2017 OWCP received appellant's overpayment recovery questionnaire (Form OWCP-20) indicating that she disagreed that the overpayment occurred, disagreed with the finding of fault, and was requesting waiver of the overpayment.

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.¹ 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.²

As noted above, on August 1, 2017 appellant disagreed with the findings of the preliminary notice of overpayment and submitted an overpayment recovery questionnaire. OWCP did not review this additional evidence prior to issuing the final overpayment decision on August 2, 2017.

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

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2017 is set aside and the case is remanded for further action consistent with this order of the Board.

¹ *William A. Couch*, 41 ECAB 548 (1990); *N.L.*, Docket No. 17-1058 (issued February 8, 2018).

² *Id.*

Issued: February 5, 2019
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