

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

C.J., Appellant)
and) Docket No. 18-1202
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 8, 2019
Vista, CA, 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 May 24, 2018 appellant filed a timely appeal from a January 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 18-1202.

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

By notice dated July 31, 2017, OWCP advised appellant of its preliminary determination that he had received a \$178,197.45 overpayment of compensation because he received reimbursement of travel expenses for the period May 7, 2007 through June 15, 2012 when he had reported false mileage. It noted that an investigation, initiated by the employing establishment's Office of the Inspector General (OIG) in 2012 regarding reimbursement payments made to appellant for travel he claimed in connection to his workers' compensation claim, revealed that he had submitted 978 false mileage reimbursement claims for doctor visits he did not attend. OWCP

¹ The Board notes that following the issuance of OWCP's January 18, 2018 decision and on appeal, appellant submitted additional evidence. However, section 501.2(c)(1) of the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

also made a preliminary determination that appellant was at fault in the creation of the overpayment as he had accepted payments he knew or should have known were incorrect.

By decision dated January 18, 2018, OWCP finalized the fact and amount of the preliminary overpayment determination and the finding of fault. It required repayment of the overpayment in full.

OWCP paid appellant compensation for travel to doctor visits based on the submission of OWCP-957 travel reimbursement forms. In determining that an overpayment occurred and the amount of overpayment, OWCP indicated that an OIG investigation claimed to find that appellant's OWCP-957 forms contained mileage for doctor visits that he did not attend during the period May 7, 2007 to June 15, 2012. Although the investigative report included two of appellant's OWCP-957 forms dated June 22, 2007 and June 29, 2012 as exhibits, the remaining 976 forms he submitted to OWCP to request travel reimbursements were not contained in the record. The Board, therefore, cannot verify that appellant requested that he be paid for incorrect mileage.

OWCP's procedures provide that all evidence that was before OWCP at the time it rendered its decision should be in the case record before the Board.² To consider appellant's appeal in piecemeal fashion, as presented to the Board, could result in further inconsistent results.³ It is the Board's policy to avoid such an outcome.⁴

Accordingly, the case will be remanded to OWCP for reconstruction of the record, including obtaining the OWCP-957 forms completed and signed by appellant for the claimed reimbursement period. Following reconstruction of the record, OWCP shall issue a *de novo* decision on the merits of the claim.

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

³ See A.B., Docket No. 17-1480 (issued June 8, 2018).

⁴ *Id.*; see also William T. McCracken, 33 ECAB 1197 (1982).

IT IS HEREBY ORDERED THAT the January 18, 2018 decision 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: March 8, 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