

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

M.R., Appellant	)	
	)	
and	)	<b>Docket No. 19-1626</b>
	)	<b>August 19, 2020</b>
<b>DEPARTMENT OF THE INTERIOR,</b>	)	
<b>NATIONAL PARK SERVICE, GEORGE</b>	)	
<b>WASHINGTON MEMORIAL PARKWAY-</b>	)	
<b>TURKEY RUN PARK, Arlington, VA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 29, 2019 appellant filed a timely appeal from a July 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1626.<sup>1</sup>

On June 20, 1997 appellant, then a 53-year-old tractor operator, sustained injury to her left ankle when she slipped and twisted it when picking up litter on a hillside while in the performance of duty. OWCP accepted her claim for internal derangement of the left knee, left knee replacement, and arthroscopic surgery and paid compensation benefits, including a schedule award and for a loss of wage-earning capacity determination.

OWCP issued a June 4, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$46,924.23 for the period December 1, 2013 to April 27, 2019 because it failed to offset the amount of Social Security Administration (SSA) age-related retirement benefits attributable to federal service under the Federal Employees Retirement

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<sup>1</sup> Appellant timely requested oral argument before the Board. In light of the disposition of the appeal, the oral argument request is denied.

System (FERS) from her wage-loss compensation. It found that the entire amount of wage-loss compensation benefits paid from December 1, 2013 to April 27, 2019 constituted an overpayment as her SSA offset was greater than the amount of her compensation benefits. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It provided her with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). OWCP notified appellant 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.

On July 15, 2019 OWCP received appellant's request for a decision based on the written evidence and completed Form OWCP-20.

By decision dated July 17, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$46,924.23 for the period December 1, 2013 through April 27, 2019 because it had not offset her SSA age-related retirement benefits attributable to her federal service from her wage-loss compensation. It determined that she was without fault in the creation of the overpayment. OWCP denied waiver of recovery of the overpayment, noting that as of the date of its decision it had not received a response to the preliminary overpayment determination.

The Board has duly considered the matter and notes that in the case of *William A. Couch*,<sup>2</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its July 17, 2019 decision, OWCP noted that, “[a]s of this date, no response has been received to the [p]reliminary [o]verpayment [d]etermination.” However, appellant submitted a completed Form OWCP-20 which OWCP received on July 15, 2019. OWCP thus failed to follow its procedures by properly discussing all of the relevant evidence of record.<sup>3</sup>

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.<sup>4</sup> The Board finds that, as OWCP did not address the above-referenced evidence in its July 17, 2019 decision, this case is not in posture for decision.<sup>5</sup> On remand, OWCP shall review all evidence of record and, following any further development deemed necessary, issue a *de novo* decision.

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<sup>2</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>3</sup> OWCP's procedures provide, “All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date.” Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

<sup>4</sup> *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 2.

<sup>5</sup> *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

**IT IS HEREBY ORDERED THAT** the July 17, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 19, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board