

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

A.J., widower of P.J., Appellant)	
)	
and)	Docket No. 19-1261
)	Issued: April 30, 2020
DEPARTMENT OF AGRICULTURE, RURAL)	
HOUSING SERVICE, St. Louis, MO, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 13, 2019 appellant, the employee's widower, filed a timely appeal from December 11, 2018 and January 17, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 19-1261.

By decision dated December 11, 2018, OWCP found that appellant forfeited survivor's benefit compensation from May 4, 1993 through December 8, 2018 in the amount of \$453,652.20.

By decision dated January 17, 2019, OWCP finalized an overpayment of compensation occurred in the amount of \$453,652.20 and that appellant was at fault in the creation of the overpayment.² It explained that appellant had received survivor's benefits that commenced on

¹ The Board notes that, following the January 17, 2019 decision, OWCP received additional evidence. However, 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 additional evidence for the first time on appeal. *Id.*

² OWCP had issued a preliminary determination on December 11, 2018, finding that appellant had received an overpayment of compensation for which he was at fault in its creation and, therefore, ineligible for waiver of recovery of the overpayment.

April 4, 1991 following his wife's death in the performance of duty that day. Appellant was eligible to receive survivor's benefits because he had purportedly not remarried before the age of 55. OWCP found that the forfeiture and overpayment of compensation occurred because appellant had remarried on May 4, 1993, before he turned 55 years of age, but had not reported his remarriage on claims for continuance of compensation (Form CA-12). The form asks if the compensationner has married since the death of the employee and includes a certification that, by his or her signature, the information reported on the form is true and correct.

The Board, having duly considered the matter, finds that this case is not in posture for decision. Upon examining the case record, it is found that the record is incomplete as it contains no evidence prior to 2003. Other than a compensation record, there is nothing in the record concerning CA-12 forms signed by appellant or other evidence dating back to May 4, 1993 when he remarried, which is the beginning of the period of forfeiture and overpayment. The oldest Form CA-12 of record was signed by appellant on January 20, 2003.

Pursuant to 20 C.F.R. § 501.2(c)(1), 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. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes, or drawings.³ Evidence may not be incorporated by reference, and evidence from another claimant's case file may not be used.⁴ All evidence that forms the basis of a decision must be in that claimant's case record.⁵

As the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. On remand OWCP shall obtain all evidence included in the employee's record regarding her death and the commencement of appellant's survivor's benefits and, especially, any certifications appellant made beginning in 1993 that he had not remarried. After OWCP has reconstructed and properly assembled the record consistent with the above-noted directive, it shall issue a *de novo* decision.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁴ *Id.*

⁵ *Id.*

IT IS HEREBY ORDERED THAT the January 17, 2019 and December 11, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.⁶

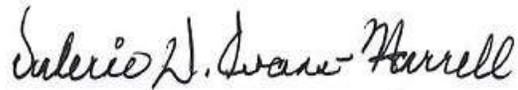
Issued: April 30, 2020
Washington, DC



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



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



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

⁶ The Board notes that, during the pendency of this appeal, OWCP issued a May 17, 2019 decision, which revised the period and amount of the overpayment. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019; *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's May 17, 2019 decision is set aside as null and void.