

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

K.B., Appellant)	
)	
and)	Docket No. 19-1332
)	Issued: July 17, 2020
U.S. POSTAL SERVICE, TAMPA PROCESSING & DISTRIBUTION CENTER, Tampa, FL, Employer))))	
)	

Appearances: *Case Submitted on the Record*
Anthony S. Arenas Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 28, 2019 appellant, through counsel, filed an appeal from a March 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1332.²

On February 22, 2013 appellant, then a 35-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 2013 she felt a pop in her neck when lifting a tub of mail while in the performance of duty. OWCP accepted the claim for displacement of cervical

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that following the March 20, 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.*

intervertebral disc without myelopathy, anxiety disorder, and depression. On September 4, 2013 appellant returned to part-time limited-duty work for four hours per day and OWCP paid her wage-loss compensation on the periodic rolls for her loss of wage-earning capacity. On July 17, 2014 she stopped work and elected disability retirement effective November 14, 2018.

On September 24, 2015 the employing establishment provided OWCP with a federal employee health plan (FEHP) notice of change in health benefits enrollment (Form 2810), indicating that enrollment code 112, should be transferred from the employing establishment to OWCP effective July 17, 2014.

In a September 12, 2018 preliminary notice, OWCP advised appellant of its determination that she had received an overpayment of compensation in the amount of \$13,700.90 because it failed to deduct health benefit premiums from her Federal Employees' Compensation Act (FECA) benefits for the period July 26, 2014 through September 16, 2017 and January 7 through March 3, 2018. It also informed her of its preliminary determination that she was at fault in the creation of the overpayment because she accepted payments which she knew or should reasonably have known were incorrect. OWCP requested that appellant provide information regarding her income, assets, and expenses on an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days, if she contested that an overpayment occurred.

In an overpayment action request dated October 1, 2018 and received on October 9, 2018, appellant contested the preliminary overpayment determination. In an accompanying letter, she disputed the overpayment amount and finding of fault. Appellant asserted that an overpayment of compensation could not have occurred because she did not have insurance coverage during that period and was subsequently notified by her health insurance carrier that her health benefits had been cancelled. In support of her arguments contesting the preliminary overpayment decision, appellant provided a timeline of letters, telephone calls, and notices with OWCP, the employing establishment, and the healthcare provider documenting a history of her health insurance benefits.

By decision dated March 20, 2019, OWCP finalized the preliminary determination, finding that appellant received a \$13,700.90 overpayment of compensation for the period July 26, 2014 through September 16, 2017 and January 7 through March 3, 2018, as OWCP failed to deduct health benefit premiums. It further found that she was at fault in the creation of the overpayment, noting that "as of this date, no response has been received to the preliminary overpayment determination" and she had "not contested the with fault finding." OWCP requested that appellant repay the amount of the overpayment in full.

The Board has duly considered the matter and finds that the case is not in posture for a decision.³ In the case of *William A. Couch*,⁴ 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.

³ *S.H.*, Docket No. 19-1582 (issued May 26, 2020).

⁴ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

In its March 20, 2019 decision, OWCP noted that, “as of this date, no response has been received to the preliminary overpayment determination.” It further found that appellant had not contested the finding of fault. The record reflects, however, that accompanying the October 1, 2019 overpayment action request was a detailed narrative statement and history of timeline submitted by appellant disputing the preliminary overpayment determination. Appellant provided arguments discussing why an overpayment of health benefit deductions could not have occurred in her claim. She further provided arguments that the overpayment occurred through no fault of her own. The evidence was received by OWCP on October 9, 2018.

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.⁵ However, OWCP failed to follow its procedures by properly discussing all of the relevant evidence of record prior to issuing the final overpayment decision on March 20, 2019.⁶ Thus, the Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in the March 20, 2019 decision.⁷ On remand OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.⁸

⁵ 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 7.

⁶ See generally *J.S.*, Docket No. 19-1384 (issued April 8, 2020).

⁷ *M.K.*, Docket No. 18-0714 (issued February 5, 2019).

⁸ *M.P.*, Docket No. 16-1325 (issued November 2, 2016).

IT IS HEREBY ORDERED THAT the March 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further a proceedings consistent with this order of the Board.

Issued: July 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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