

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

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<b>E.V., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0562</b>
	)	<b>Issued: May 27, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Lexington Park, MD, 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  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On January 16, 2019 appellant filed a timely appeal from a January 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> OWCP found that she had been overpaid \$9,386.40 in wage-loss compensation, for which she was at fault, thereby precluding

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<sup>1</sup> The Board notes that following the January 10, 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.*

waiver of recovery of the overpayment.<sup>2</sup> The Clerk of the Appellate Boards docketed the appeal as No. 19-0562.<sup>3</sup>

On June 11, 1997 appellant, then a 45-year-old modified carrier, injured her lower back while in the performance of duty. By decision December 17, 1997, OWCP initially accepted her traumatic injury claim for lumbosacral strain. On January 8, 2003 it expanded appellant's accepted conditions to include lumbar radiculopathy. Appellant had been receiving wage-loss compensation for temporary total disability on the periodic compensation rolls since June 16, 2002.

By decision dated April 17, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective April 29, 2018. However, it continued to pay her wage-loss compensation for total disability through October 13, 2018.

On November 28, 2018 OWCP issued a preliminary overpayment determination finding that appellant had been overpaid \$9,386.40 for the period April 29 to October 13, 2018 because she continued to receive wage-loss compensation on the periodic rolls after her compensation had been terminated, effective April 29, 2018. It further determined that she was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known to be incorrect. OWCP requested that appellant complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents.

In a letter dated December 4, 2018, received by OWCP on December 13, 2018, appellant indicated that she was contesting OWCP's finding that the overpayment was her fault. She alleged that she was not responsible for the inefficiency of the U.S. Department of Labor or the U.S. Postal Service for losing or not finding her mail. Appellant also submitted a completed OWCP-20, which included necessary financial information for consideration of her claim. She also explained the basis for her belief that she was not at fault in the creation of the overpayment.

By decision dated January 10, 2019, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$9,386.40, and that she was at fault. In making this decision, it indicated that it had not received a response from appellant to its preliminary determination and that she had not contested the finding.

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<sup>2</sup> Appellant timely requested oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated December 11, 2019, the Board exercised its discretion and denied appellant's request finding that the appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Oral Argument*, Docket No. 19-0562 (issued December 11, 2019).

<sup>3</sup> The Board notes that subsequent to the filing of the current appeal, OWCP vacated its January 10, 2019 decision, and referred the case to its Branch of Hearings and Review for a prerecoumpment hearing, which was held on April 12, 2019. By decision dated July 15, 2019, OWCP's hearing representative similarly found that appellant received a \$9,386.40 overpayment, and that she was at fault in the creation of the overpayment. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Consequently, OWCP's hearing representative's July 15, 2019 final overpayment determination is null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g., M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990).

The Board has duly considered the matter and finds that appellant's December 4, 2018 letter and accompanying Form OWCP-20, which was timely submitted following the preliminary overpayment determination, constituted a request for a hearing. Following the request, OWCP improperly finalized the overpayment determination without conducting a hearing. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged fact and amount of overpayment, or any other issues.<sup>4</sup> The Board, therefore, finds that OWCP issued a final decision regarding the overpayment of compensation without providing appellant due process.<sup>5</sup> Because appellant requested a hearing, the case will be remanded to OWCP to schedule the requested hearing to be followed by an appropriate decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the January 10, 2019 decision of the Office of Workers' Compensation Program is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: May 27, 2020  
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>4</sup> See *E.D.*, Docket No. 18-1753 (issued August 13, 2019); *I.R.*, Docket No. 18-0088 (issued April 9, 2018); *Scherrie L. Stanley*, 53 ECAB 433 (2002).

<sup>5</sup> See *K.P.*, Docket No. 17-1396 (issued May 4, 2018); *J.M.*, Docket No. 14-0280 (issued May 5, 2014); see generally *James B. Moses*, 52 ECAB 465 (2001).