

OWCP initially paid appellant wage-loss compensation for temporary total disability on the supplemental rolls. It placed her on the periodic rolls beginning January 13, 2013. OWCP returned appellant to the supplemental rolls as of February 7, 2016.

In a letter to appellant dated February 28, 2019, OWCP advised that appellant returned to work as an attorney instructor on February 25, 2019 for 40 hours per week. It explained that a final 28-day compensation payment that partially covered the period following her return to work would be issued, and would result in an excess of compensation, or an overpayment.

On March 14, 2019 OWCP notified appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$1,202.00 for the period February 25 through March 2, 2019 because she continued to receive wage-loss compensation for temporary total disability following her return to full-time, full-duty work. It found that appellant was without fault in the creation of the overpayment. OWCP informed her that she had 30 days to request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing on the issues of fault and a possible waiver of recovery of the overpayment. It provided appellant with an overpayment recovery questionnaire (Form OWCP-20) for her completion, along with appeal rights.

On April 15, 2019 OWCP received appellant's completed Form OWCP-20 with an explanation and supporting financial documentation.

By decision dated April 17, 2019, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,202.00 for the period February 25 through March 2, 2019, based on her receipt of compensation for disability after her return to full-time work. It further found that she was without fault in the creation of the overpayment and denied waiver of recovery of the overpayment, noting that "as of this date, no response has been received to the preliminary overpayment determination." OWCP requested that appellant repay the amount of the overpayment in full.

On May 19, 2019 appellant requested a prerecoupment hearing and possible waiver of recovery of the overpayment.

By decision dated May 31, 2019, OWCP's Branch of Hearings and Review denied appellant's May 19, 2019 request for a hearing, finding that it had not received a request for a hearing on the preliminary overpayment determination, and that the final overpayment determination was not subject to a hearing pursuant to 5 U.S.C. § 8124(b).

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,² 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.

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

In its April 17, 2019 decision, OWCP noted that, “as of this date, no response has been received to the preliminary overpayment determination.” However, appellant submitted a completed Form OWCP-20 with explanation and submitted financial information, which was received on April 15, 2019, and OWCP failed to follow its procedures by properly discussing all of the relevant evidence of record.³

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.⁴ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in the April 17, 2019 decision.⁵ 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.⁶

³ “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).

⁴ 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.

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

⁶ In light of the Board’s disposition with regard to the merits of the overpayment, the nonmerit issue is rendered moot.

IT IS HEREBY ORDERED THAT the April 17 and May 31, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: May 26, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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