

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

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<b>B.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 19-1686</b>
	)	<b>Issued: March 30, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Cincinnati, OH, Employer</b>	)	
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*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On August 6, 2019 appellant filed a timely appeal from a July 15, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1686.<sup>2</sup>

On August 15, 2007 appellant, then a 49-year-old letter carrier, filed a notice of occupational disease (Form CA-2) alleging that she injured her right shoulder due to factors of her federal employment including shelving stock boxes with her hands held above her head. She indicated that she first became aware of the condition and that it was causally related to her

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<sup>1</sup> 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.

<sup>2</sup> The Board notes that following the July 15, 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 evidence for the first time on appeal. *Id.*

employment on December 6, 2006. Appellant did not initially stop work. OWCP accepted the claim for right shoulder impingement syndrome, right rotator cuff tear, and right shoulder osteoarthritis. It paid appellant intermittent compensation on the supplemental rolls beginning June 6, 2007. Appellant received compensation on the periodic rolls as of August 13, 2015.

On June 26, 2018 OWCP issued a preliminary determination that appellant was overpaid compensation benefits in the amount of \$15,970.58 for the period February 1, 2015 to March 31, 2018, for which she was not at fault. It explained that the overpayment was a result of her receipt of dual benefits from OWCP and Social Security Administration (SSA) age-related retirement benefits attributable to federal service, without offset, which was a prohibited dual benefit. A breakdown and calculation of how the overpayment was calculated was also attached. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20) and informed her of her appeal rights.

On July 6, 2018 appellant requested a prerecoument hearing. By decision dated October 4, 2018, an OWCP hearing representative determined that appellant's case was not in posture for a hearing as OWCP calculated that appellant was overpaid compensation benefits in the amount of \$15,970.58 for the period February 1, 2015 to March 31, 2018, however, she did not start receiving compensation benefits until April 25, 2015.

On October 9, 2018 OWCP issued a preliminary determination that appellant was overpaid compensation benefits in the amount of \$14,844.06 for the period April 25, 2015 to March 31, 2018, for which she was not at fault. It explained that the overpayment was a result of her receipt of dual benefits from OWCP and SSA age-related retirement benefits attributable to federal service, without offset, which was a prohibited dual benefit. A breakdown and calculation of the overpayment was attached. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20) and informed her of her appeal rights.

On October 24, 2018 appellant requested a prerecoument hearing. By decision dated January 23, 2019, an OWCP hearing representative found that appellant's case was not in posture for a hearing. The representative determined that the record contained two different sets of figures from SSA regarding the FERS offset, and that it was unclear why OWCP relied on the figures from March 26, 2018. The representative also determined that while OWCP calculated the overpayment of compensation benefits to appellant for the period April 25, 2015 to March 31, 2018, appellant did not receive any wage-loss compensation from May 10 to July 2, 2015. Additionally, the representative found that appellant was put on notice that her compensation would be reduced by her SSA benefits by letters from OWCP dated July 11, 2014 and August 25, 2015.

On May 22, 2019 OWCP issued a preliminary determination that appellant was overpaid compensation benefits in the amount of \$13,946.98 for the period April 25 to May 9, 2015 and the period July 3, 2015 to March 31, 2018. It explained that the overpayment was a result of her receipt of dual benefits from OWCP and SSA age-related retirement benefits attributable to federal service, without offset, which was a prohibited dual benefit. OWCP advised appellant that she

was at fault<sup>3</sup> in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known to be incorrect. A breakdown and calculation of the overpayment was also attached. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20) and informed her of her appeal rights.

On June 17, 2019 OWCP received appellant's overpayment recovery questionnaire (Form OWCP-20), and her request to contest the overpayment. Appellant submitted an SSA-1099 form for 2015, a 2016 SSA form 1099, a March 12, 2015 social security benefits statement, a July 7, 2016 benefits statement which reflected that appellant did not receive any SSA benefits from January through June 2016, and May 5 and 28, 2019 documents stating that appellant's Form 1099 social security benefits statement was unable to be processed due to no benefits paid or repaid during 2017.

By decision dated July 15, 2019, OWCP found an overpayment of compensation in the amount \$13,946.98 for the period April 25 through May 9, 2015 and the period July 3, 2015 through March 31, 2018, as OWCP had failed to offset appellant's compensation payments for the portion of her age-related SSA benefits that were attributable to her federal service. It further determined that appellant was at fault in the creation of the overpayment and was therefore not entitled to waiver of recovery of the overpayment. OWCP determined that it would recover the overpayment by deducting \$805.00 every 28 days from appellant's continuing compensation payments beginning July 21, 2019.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*<sup>4</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 15, 2019 decision, OWCP listed evidence received since the issuance of its May 22, 2019 preliminary overpayment determination, but OWCP did not reference appellant's 2016 form 1099, the July 2, 2016 social security benefits statement which related that appellant had not received benefits from January 2016, or the document indicating that appellant received no social security benefits in 2017. These documents constitute new evidence not previously considered by OWCP.

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.<sup>5</sup> For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the July 15, 2019 decision. Should the overpayment amount increase, OWCP shall issue a new preliminary overpayment decision affording appellant appeal rights including a preresoupment hearing and the opportunity to provide an updated Form

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<sup>3</sup> See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.300.4, *Initial Determinations in an Overpayment, Fault Determinations* (September 2018)

<sup>4</sup> 41 ECAB 548, 553 (1990); see also *L.T.*, Docket No. 19-0145 (issued June 3, 2019).

<sup>5</sup> *R.M.*, Docket No. 19-1406 (issued February 11, 2020); *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

OWCP-20. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the claim. Accordingly,

**IT IS HEREBY ORDERED THAT** the July 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: March 30, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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