

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

_____)	
W.C., Appellant)	
)	
and)	Docket No. 22-0735
)	Issued: November 29, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Bronx, NY, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On April 13, 2022 appellant filed a timely appeal from a March 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0735.

On October 10, 2000 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 23, 2000, he sustained pain in his legs and back, and a herniated disc when loading heavy postal containers onto trailers while in the performance of duty. OWCP accepted his claim for herniated intervertebral disc at L3-L4. Appellant stopped work on September 25, 2000.

On July 25, 2018 and August 19, 2019 OWCP forwarded a Federal Employees Retirement System (FERS/SSA) dual benefits form to SSA for completion.

On October 1, 2019 SSA completed the FERS/SSA dual benefits calculation form which indicated that, effective June 2017, appellant reached retirement age and became eligible for SSA age-related retirement benefits.

On November 13, 2019 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from June 1, 2017 through November 9, 2019 and computed a total overpayment amount of \$40,607.28.

In a preliminary overpayment determination dated November 26, 2021, OWCP notified appellant of its preliminary finding that he had received an overpayment of compensation in the amount of \$40,607.26 for the period June 1, 2017 through November 9, 2019, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In an overpayment action request form dated December 24, 2021 appellant disagreed with the overpayment and requested waiver because he was found to be without fault in the creation of the overpayment. He requested that OWCP issue a decision based on the written evidence. Appellant submitted a Form OWCP-20 of even date and reported total monthly income of \$5,148.00, total monthly expenses of \$3,844.60 and installment debt of \$553.60 a month. He reported cash on hand of \$1,400.00, and a savings account balance of \$400.00. Appellant stated that he reported receiving the payments from 2017 through 2019 to OWCP and thought he was fully compliant.

By decision dated March 23, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$40,607.28¹ for the period June 1, 2017 through November 9, 2019, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP stated “[a]s of this date, no response has been received to the Preliminary Overpayment Determination. You have not requested a waiver of the overpayment and it should be finalized for the reasons set forth in the preliminary decision.” It required recovery of the overpayment by deducting \$111.29 every 28 days from appellant’s continuing compensation payments.

The Board has duly considered the matter and finds that this case is not in posture for 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. As detailed above, on December 24, 2021 appellant submitted an overpayment action request form and disagreed with the overpayment and requested waiver

¹ The Board notes that the preliminary overpayment determination noted an overpayment amount of \$40,607.26 and the final overpayment decision noted an overpayment amount of \$40,607.28.

² 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

because he was found to be without fault in the creation of the overpayment. He requested that OWCP issue a decision based on the written evidence. Appellant also submitted a Form OWCP-20 of even date. OWCP, however, did not review this additional evidence in its March 23, 2022 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.³

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its March 23, 2022 decision.⁵ On remand, following any such other further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the March 23, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 29, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should 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 *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *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 *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).