

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

_____)	
J.B., Appellant)	
)	
and)	Docket No. 21-1235
)	Issued: July 21, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
CARL VINSON VA MEDICAL CENTER,)	
Dublin, GA, Employer)	
_____)	

Appearances:
Shannon Bravo, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING REMAND

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 12, 2021 appellant, through her representative filed a timely appeal from a June 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).² By that decision OWCP finalized its April 16, 2021 preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$1,953.04 for the period

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 June 24, 2021 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.*

February 28 through March 27, 2021, for which she was without fault.³ It further determined that the circumstances of the case did not warrant waiver of recovery of the overpayment because no supportive financial information had been submitted. OWCP requested that appellant forward the full amount as repayment of the overpayment. The Clerk of the Appellate Boards assigned Docket No. 21-1235 to the appeal.

On September 27, 2021 the Director of OWCP filed a motion to remand requesting that the Board set aside OWCP's June 24, 2021 decision and remand the case for further development. The Director noted that the April 16, 2021 preliminary overpayment determination was not sent to appellant's designated representative, and therefore OWCP had not provided proper notice of the overpayment and the right to a prerecoupment hearing. On remand, the Director indicated that OWCP will reissue the preliminary overpayment determination, "containing all appeal rights including the right to a prerecoupment hearing."

The Clerk of the Appellate Boards served appellant with a copy of the Director's motion to remand on September 28, 2021. No reply was received.

The Board, having duly considered the matter, concludes that, as the Director has acknowledged that OWCP failed to provide appellant's authorized representative with a copy of the April 16, 2021 preliminary overpayment determination, the motion shall be granted. On remand, OWCP shall reissue the preliminary overpayment determination which contains all appeal rights, including a right to a prerecoupment hearing. Accordingly,

³ The Board notes that, during the pendency of this appeal, OWCP issued a July 12, 2022 final overpayment decision covering the same period as the June 24, 2021 decision currently on appeal. As the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s) in a case on appeal, OWCP's July 12, 2022 decision 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); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

IT IS HEREBY ORDERED THAT the motion to remand filed by the Director of the Office of Workers' Compensation Programs is granted. The decision of OWCP dated June 24, 2021 is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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