

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

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<b>E.E., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1275</b>
	)	<b>Issued: December 12, 2012</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On May 3, 2012 appellant filed a timely appeal from a January 9, 2012 final overpayment decision of the Office of Workers' Compensation Programs (OWCP). The claim was docketed as No. 12-1275. The Board finds that this case is not in posture for decision.

By letter dated September 26, 2011, OWCP made a preliminary finding that appellant received an overpayment in compensation in the amount of \$5,246.27 for the period April 22, 2003 to March 20, 2006 because she received compensation at an incorrect pay rate.<sup>1</sup> It found appellant not at fault in the creation of the overpayment. Appellant was provided an overpayment action request form and an overpayment questionnaire. On October 4, 2011 she requested a telephone conference, with OWCP, regarding the issue of overpayment and submitted a completed overpayment questionnaire with financial information.<sup>2</sup> These documents were received by OWCP on October 12, 2011. The record does not establish that OWCP conducted a telephonic conference. By decision dated January 9, 2012, OWCP finalized the

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<sup>1</sup> Appellant received wage-loss compensation and was placed on the periodic rolls beginning October 5, 2003 based on her annual salary of \$42,808.00 or \$915.56 per week, including night differential and Sunday premium pay, at the time of her date of injury. The record reveals, however, that at the time of her date of injury appellant's annual salary was \$42,558.00 or \$818.42 per week. With night differential and Sunday premium pay, her total weekly pay was \$882.51. An overpayment worksheet revealed that appellant received \$97,633.85 in compensation from April 22, 2003 to March 20, 2006, but she should have received \$92,387.58, resulting in an overpayment of \$5,246.27.

<sup>2</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Conferences*, Chapter 2.500 (September 2011).

preliminary determination, finding that appellant received an overpayment in the amount of \$5,246.27. It stated that the overpayment had occurred not because of an incorrect pay rate, but because health premiums were not deducted. No finding was made on waiver.

The Board has duly considered the matter and notes that when adjudicating a claim, OWCP is obligated to consider all relevant evidence properly submitted by a claimant and received by OWCP before the final decision is issued.<sup>3</sup> Following the issuance of OWCP's preliminary decision, appellant submitted the overpayment action request form and requested a telephone conference. She also submitted an overpayment questionnaire with financial information relevant to the issue of waiver of recovery. OWCP, however, did not acknowledge appellant's request for telephone conference and did not consider the evidence and argument appellant submitted following the preliminary decision.

The Board finds that the case is not in posture for decision as OWCP did not address appellant's request for telephone conference and its additional documentation.

The Board concludes that the January 9, 2012 decision was issued prematurely. The case must be remanded to OWCP to respond to appellant's request for a telephone conference regarding the fact of overpayment of compensation and review of the additional documentation submitted regarding waiver. Following this and other such development as deemed necessary, OWCP shall issue an appropriate final decision.

**IT IS HEREBY ORDERED THAT** the January 9, 2012 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to OWCP for proceedings consistent with this order of the Board.

Issued: December 12, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>3</sup> See *Willard McKennon*, 51 ECAB 145 (1999); *William A. Couch*, 41 ECAB 548 (1990).