

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

M.G., Appellant)	
)	
and)	Docket No. 21-0926
)	Issued: December 7, 2021
U.S. POSTAL SERVICE, STOCKYARD POST OFFICE, Chicago, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 1, 2021 appellant, through counsel, filed a timely appeal from a February 18, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0926.

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 22, 2016 appellant, then a 53-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2015 she injured her left foot when a shelf from an automated postal center (APC) fell on it while in the performance of duty. OWCP

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 Docket No. 20-0735 (issued October 23, 2020).

accepted her claim for displaced fracture of the second metatarsal bone of the left foot. It paid wage-loss compensation on the supplemental rolls, beginning May 4, 2016.

By decision dated March 28, 2019, OWCP found that appellant had forfeited her entitlement to compensation for the period May 26, 2016 through January 20, 2017 because she knowingly failed to disclose her outside earnings and employment pursuant to 5 U.S.C. § 8106(b).

On April 2, 2019 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$13,963.50 for the period May 26, 2016 through January 20, 2017, as she had forfeited her entitlement to wage-loss compensation. It provided its calculations on the amount of compensation paid during the period. OWCP further notified appellant of its preliminary finding that she was at fault in the creation of the overpayment. It provided her with an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On April 2, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, regarding the March 28, 2019 forfeiture decision. The telephonic hearing was held on July 17, 2019.

By decision dated July 26, 2019, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$13,963.50 for the period May 26, 2016 through January 20, 2017, as she had forfeited her entitlement to wage-loss compensation. It further finalized its finding that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

By decision dated September 24, 2019, an OWCP hearing representative affirmed the March 28, 2019 forfeiture decision.

Appellant appealed the September 24, 2019 decision to the Board. By decision dated October 23, 2020, the Board affirmed, in part, and reversed, in part, the September 24, 2019 decision. It found that OWCP had properly determined that appellant forfeited her entitlement to compensation for the period June 11, 2016 through January 20, 2017, as she had failed to report earnings from employment during the claimed period. The Board also found that OWCP had improperly determined that appellant had forfeited her entitlement to compensation for the period May 26 through June 10, 2016 because the evidence of record did not support that she was engaged in employment activity or received earnings during this period.

By decision dated February 18, 2021, OWCP issued an amended final overpayment determination that appellant had received an overpayment of compensation in the amount of \$13,779.34 for the period June 11, 2016 through January 20, 2017 because she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8106(b). It further found that appellant was at fault in the creation of the overpayment because she knowingly accepted payments that she knew she was not entitled to and she failed to furnish information, which she should have known to be material.

The Board has duly considered the matter and finds that OWCP improperly issued its February 18, 2021 decision regarding the overpayment of compensation without providing appellant due process.³ OWCP's regulations provide that, before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment exists and the amount of the overpayment.⁴ The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁵ OWCP must inform the individual of her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.⁶ Its procedures further provide that a preliminary overpayment determination should be issued within 30 days and must clearly identify the reason that the overpayment occurred and the basis for any fault finding.⁷

The Board has found that the preliminary notice of findings is essential in overpayment cases because OWCP regulations limit further review of a final decision concerning overpayment to the Board. A claimant is prohibited from requesting a hearing, or reconsideration, following a final overpayment decision.⁸ The claimant is, therefore, precluded from introducing new evidence to rebut findings made in a final overpayment decision.

In this case, OWCP did not issue a new preliminary overpayment determination advising appellant of its findings following the October 23, 2020 Board decision. Instead of issuing a new preliminary overpayment determination advising appellant of its findings following the new period of forfeiture, June 11, 2016 through January 20, 2017, OWCP simply amended the final amount of overpayment to the amount of \$13,779.34. As OWCP failed to issue a new preliminary overpayment determination explaining its new findings, and providing appellant with the right to challenge the fact and amount of overpayment, it did not comply with its procedural rights under its regulations.⁹

Accordingly, the Board finds that the case must be remanded for OWCP to issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

³ See *L.V.*, Docket No. 15-1856 (issued July 19, 2016); *B.T.*, 14-1909 (issued May 19, 2015).

⁴ 20 C.F.R. § 10.431(a).

⁵ *Id.* at § 10.431(b).

⁶ *Id.* at § 431(c)–(d).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.5 (September 2020); see also *P.A.*, Docket No. 17-0075 (issued April 10, 2017).

⁸ *A.L.*, Docket No. 21-0099 (issued September 20, 2021); *K.G.*, Docket No. 17-517 (issued September 8, 2017); *L.V.*, *supra* note 3; see also 20 C.F.R. § 10.440(b).

⁹ *Id.* at §§ 10.431, 10.432; see also *M.V.*, Docket No. 13-798 (issued August 14, 2013); *K.G.*, Docket No. 08-2135 (issued April 16, 2009).

IT IS HEREBY ORDERED THAT the February 18, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 7, 2021
Washington, DC

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

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

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