

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

_____)	
H.C., Appellant)	
)	
and)	Docket No. 19-1976
)	Issued: May 26, 2020
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, Oakdale, LA, 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
PATRICIA H. FITZGERALD, Alternate Judge

On September 27, 2019 appellant filed a timely appeal from a June 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 19-1976.¹

In a preliminary overpayment determination dated May 21, 2019, OWCP informed appellant that he had received an overpayment of compensation in the amount of \$11,199.31 because for the period November 1, 2017 through March 30, 2019 because it failed to offset his compensation payments by the portion of his Social Security Administration (SSA) age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment because he relied on misinformation given in writing by OWCP or by another government agency which he had reason to believe was connected with the administration of benefits as to the interpretation of a pertinent provision of FECA or its regulations, and there was documentation that substantiated that the misinformation was actually

¹ The Board notes that following the June 25, 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.*

communicated to appellant. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method and advised him that he could request waiver of recovery of the overpayment. It also requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income and expenses. OWCP advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. It further notified him 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 prerecoupment hearing.

By decision dated June 25, 2019, OWCP finalized the May 21, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$11,199.31 for the period November 1, 2017 through March 30, 2019 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to federal service. It further found that he was without fault in the creation of the overpayment because he could not have reasonably known that an improper payment occurred. However, OWCP denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery would defeat the purpose of FECA or would be against equity and good conscience. It required recovery of the overpayment by deducting \$200.00 every 28 days from appellant's continuing wage-loss compensation payments.

The Board has duly considered the matter and finds that the case is not in posture for decision. The record submitted to the Board is incomplete as the current record does not contain neither the claim form originally filed by appellant nor OWCP's formal acceptance of appellant's work-related conditions. It also appears that substantial portions of the record, including documents submitted prior to 2002 are not of record. As such, the Board is unable to determine whether documents relating to appellant's receipt of SSA benefits, or relating to appellant's financial circumstances are missing from the record.

Section 501.2(c) of the Board's *Rules of Procedure*² provides that the Board has jurisdiction to consider and decide appeals from the final decision of OWCP in any case arising under the Federal Employees' Compensation Act.³ Because the record as transmitted to the Board is incomplete and would not permit an informed adjudication of the case,⁴ the Board is unable to properly consider and decide appellant's claim. The case, therefore, is remanded to OWCP for reconstruction and proper assemblage of the record.⁵ After such further development as deemed necessary, OWCP should issue a *de novo* decision on appellant's alleged overpayment.

² 20 C.F.R. § 501.2(c).

³ 5 U.S.C. § 8101 *et seq.*

⁴ *See D.H.*, Docket No. 17-0224 (issued August 16, 2018).

⁵ *Id.*

IT IS HEREBY ORDERED THAT the June 25, 2019 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: May 26, 2020
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