

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

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**SHEILA D. STEWART, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tamaqua, PA, Employer**

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**Docket No. 05-1214  
Issued: September 30, 2005**

*Appearances:*  
*Sheila D. Stewart, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 10, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 2, 2005, which denied her request for a prerecoupment hearing. Under 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over this issue.

**ISSUE**

The issue is whether the Office properly denied her request for a prerecoupment hearing before an Office hearing representative.

**FACTUAL HISTORY**

Appellant, a 42-year-old mail clerk, injured her lower back, hips and lower stomach on September 8, 1999 while reaching to place a file in her desk drawer. She filed a claim for benefits on September 14, 1999, which the Office accepted for lumbar strain. The Office paid her appropriate compensation for total disability.

On April 24, 2000 appellant returned to a light-duty position for four hours a day with the employing establishment. She worked at this position until September 5, 2000, asserting that her worked-related condition prevented her from performing her work duties. On August 1, 2001 the Office terminated appellant's wage-loss compensation on the grounds that she refused an offer of suitable work. By decision dated June 6, 2002, an Office hearing representative affirmed the August 1, 2001 termination decision.

By letters dated September 17 and October 27, 2004, the Office made a preliminary determination that an overpayment of compensation was created in the amount of \$26,989.32 from November 19, 2000 to October 29, 2001, a period in which she had earnings from self-employment. The Office found that appellant was at fault in creating the overpayment because she failed to provide information which she knew or should have known to be material, *i.e.*, her earnings from self-employment. The Office informed appellant that if she disagreed with the decision she could, within 30 days, submit evidence or argument to the Office, or request a prerecoupment hearing with the Branch of Hearings and Review.

On November 22, 2004 appellant requested a prerecoupment hearing and a waiver of recovery of overpayment.

In a decision dated February 2, 2005, the Office found that appellant's request for an oral hearing was untimely filed. The Office noted that appellant's request was postmarked November 30, 2004, which was more than 30 days after the issuance of the Office's October 27, 2004 decision, and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

### **LEGAL PRECEDENT**

Following issuance of a preliminary overpayment decision, the employee is allowed to present evidence to the Office to contest the findings of the preliminary decision. The Office's regulations provide:

"The individual may present this evidence to [the Office] in writing or at a prerecoupment hearing. The evidence must be presented or the hearing must be requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right."<sup>1</sup>

### **ANALYSIS**

In the present case, because appellant's November 30, 2004 request for a prerecoupment hearing was postmarked more than 30 days after the Office's October 27, 2004 decision, she waived her right to a hearing. The Office considered whether to grant a discretionary hearing

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<sup>1</sup> See 20 C.F.R. § 10.432.

and advised appellant that she could pursue her claim through the reconsideration process. Pursuant to 20 C.F.R. § 10.432, however, the Office had no discretion to grant the untimely request for a hearing.<sup>2</sup> The Board finds, however, that the Office's exercise of discretion in this case was harmless error. As the Office had not issued a final overpayment decision prior to this filing of this appeal, the Board has no further jurisdiction over this case at this time.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for an oral hearing by an Office hearing representative.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 2, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 30, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>2</sup> See 20 C.F.R. § 10.440; see *Charles E. Nance*, 54 ECAB \_\_\_\_ (Docket No. 01-1923, issued February 28, 2003).