

On October 14, 2005 the Office made a preliminary determination that appellant should forfeit her entitlement to compensation for the period June 16, 2003 and May 12, 2004, on the grounds that she had knowingly withheld self-employment information from the Office. On

December 1, 2005 the Office finalized its preliminary decision. On December 1, 2005 the Office also issued a preliminary finding that appellant had been overpaid in the amount of \$32,970.81, as a result of the forfeiture determination. The Office found that appellant was at fault in the creation of this overpayment because she knowingly failed to report self-employment information on Form EN1032. The Office advised appellant that, if she disagreed with the fact or amount of the overpayment, or the finding of fault, she had a right to submit any evidence or arguments, and the right to request a prerecoupment hearing within 30 days. The record also contains a second preliminary determination of overpayment dated December 5, 2005, which was identical in content to the December 1, 2005 preliminary determination, and which contained identical notice provisions to appellant.

By letter dated January 6, 2006, appellant requested a prerecoupment hearing on the issues of fault and a possible waiver of the overpayment. She explained that she had not responded within 30 days because she had been unable to meet with her counsel. The envelope in which the request was sent was postmarked January 6, 2006. In support of her request, appellant submitted an overpayment recovery questionnaire.

By decision dated January 30, 2006, the hearing representative denied appellant's request for a hearing on the grounds that her request was untimely. The hearing representative indicated that, although appellant was not entitled to a hearing as a matter of right, the overpayment issue could equally well be addressed by requesting reconsideration.

### **LEGAL PRECEDENT**

Section 10.432 of the Office's regulations provides that in response to a preliminary notice of an overpayment, a claimant may request a prerecoupment hearing within 30 days 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**

By its preliminary overpayment determination dated December 1, 2005, the Office provided appellant with written notice of her right to a prerecoupment hearing and informed her that, in order to protect her right, she must request a hearing within 30 days of the date of the letter. On January 6, 2006 appellant requested a prerecoupment hearing. Appellant accordingly failed to request a hearing within 30 days of the Office's December 1, 2005 preliminary overpayment determination. The Board notes that the record contains a second preliminary determination of overpayment dated December 5, 2006, which was identical in content to the December 1, 2005 preliminary determination, and which contained identical notice provisions to appellant. Whether appellant's 30-day period began to run on December 1 or 5, 2005, her January 6, 2006 request for a prerecoupment hearing fell outside of the 30-day period. Pursuant to 20 C.F.R. § 10.432, such failure to timely request a prerecoupment hearing constitutes a

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<sup>1</sup> 20 C.F.R. § 10.432.

waiver of her right to do so. The Office, therefore, properly denied appellant's request for a prerecoupment hearing.<sup>2</sup>

The Office's Branch of Hearings and Review further indicated that the overpayment issue could equally well be addressed on reconsideration. The Board notes, however, that a request for reconsideration is not available to a claimant in response to a preliminary notice of an overpayment, and that only the Board can review a final decision concerning an overpayment.<sup>3</sup> The Office's finding in this regard, however, is harmless error as appellant's untimely request for a prerecoupment hearing waived her right to review of the preliminary overpayment decision.<sup>4</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for a prerecoupment hearing.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* See also 20 C.F.R. § 10.440.

<sup>4</sup> The Board notes that in his April 3, 2006 letter to the Board, appellant's representative specifically sought review of the hearing representative's January 30, 2006 decision denying appellant's request for a hearing on the issue of fault and possible waiver regarding the preliminary finding of overpayment. The representative did not request review of the Office's December 1, 2005 forfeiture decision. The Board further notes that the Office's preliminary determination of overpayment is not a final decision over which the Board has jurisdiction. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 30, 2006 is hereby affirmed.

Issued: January 23, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board