

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

N.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Milan, MO, Employer)

**Docket No. 11-465
Issued: October 26, 2011**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On December 14, 2010 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) merit decision dated December 2, 2010 finding that he had received an overpayment of compensation resulting from the application of the incorrect pay rate when calculating his schedule awards. The Board docketed the appeal as No. 11-465.

The Board has duly considered the matter and notes that section 10.432 of OWCP's regulations provide that, in response to a preliminary notice of an overpayment, a claimant may request a precoupment hearing within 30 days of the written notice of overpayment.¹ Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.² OWCP issued its preliminary overpayment determination on November 2, 2010 which advised appellant that he had 30 days within which to respond. The 30-day period for determining the timeliness of his waiver request commenced on November 3, 2010, the date following the issuance of the November 2, 2010 preliminary determination. Appellant dated his request for waiver on December 2, 2010, which was received by OWCP on December 7, 2010. The Board notes that OWCP did not retain or scan into the record the envelope containing his request for waiver. As such, the date of appellant's request for waiver of the recovery of the overpayment,

¹ 20 C.F.R. § 10.432. *See Willie C. Howard*, 55 ECAB 564 (2004).

² *Afegalai L. Boone*, 53 ECAB 533, 537 n.12 (2002); *John B. Montoya*, 43 ECAB 1148 (1992).

December 2, 2010, is used to determine its timeliness. As it was within 30 days of the issuance of the November 2, 2010 preliminary overpayment decision as required by 20 C.F.R. § 10.432, it is considered timely.³ The case will be remanded to OWCP for a decision on waiver as requested by appellant.

IT IS HEREBY ORDERED THAT the December 2, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: October 26, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

³ Where OWCP neglects to retain the postmarked envelope that contained the request, the date of the letter shall be used for the purposes of determining the timeliness of the request. *See James B. Moses, 52 ECAB 465 (2001).*