

FACTUAL HISTORY

On April 3, 2012 OWCP accepted that appellant, a 58-year-old rural carrier, sustained right wrist tendinitis due to factors of his federal employment, including repetitive mail casing. Appellant underwent authorized surgery on December 10, 2012 and was placed on the periodic rolls.²

By a preliminary determination dated September 5, 2014, OWCP informed appellant that he received an overpayment of compensation in the amount of \$1,084.95 because basic life insurance premiums were not properly deducted from his compensation payments for the period December 14, 2013 through August 23, 2014. It found that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it 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.

Appellant submitted a request for a prerecoupment hearing dated September 13, 2014, which OWCP scanned into the case file as received on September 18, 2014. OWCP later received a second copy of the request on October 10, 2014. The postmark on the attached envelope was October 7, 2014.

By decision dated December 17, 2014, OWCP denied appellant's request for a prerecoupment hearing as untimely as the request was postmarked on October 7, 2014 and thus, was not made within 30 days of the September 5, 2014 preliminary determination.³

LEGAL PRECEDENT

OWCP's regulations on the recovery of overpayments provide that, before collecting the overpayment, it must provide the claimant with written notice of the fact and amount of the overpayment, the finding of fault, the right to submit evidence challenging the fact, amount or finding of fault, and the right to request waiver of the overpayment.⁴ The regulations further provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁵ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right

² By decision dated May 16, 2013, OWCP terminated appellant's wage-loss compensation benefits. Appellant requested reconsideration and in an August 14, 2013 decision, OWCP vacated its prior decision and reinstated appellant's wage-loss compensation benefits effective May 17, 2013.

³ By decision dated March 25, 2015, OWCP found that appellant received an overpayment of compensation in the amount of \$861.43, for which he was without fault, because he received wage-loss compensation after returning to work.

⁴ 20 C.F.R. § 10.431; *see also* A.G., 58 ECAB 625 (2007).

⁵ *Id.* at § 10.432.

to a hearing.⁶ The only right to a review of a final overpayment decision is to the Board.⁷ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.⁸

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for a prerecoumment hearing as untimely.

On appeal, appellant contends that he sent a timely request for a prerecoumment hearing on September 13, 2014 and OWCP filed it on September 18, 2014. The Board notes that section 10.432 of OWCP regulations provide that, in response to a preliminary notice of an overpayment, a claimant may request a prerecoumment hearing within 30 days of the written notice of overpayment.⁹ Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.¹⁰ OWCP regulations provide that the timeliness of the request is determined by its postmark or other carrier's date marking.¹¹ The 30-day period for determining the timeliness of appellant's request for a prerecoumment hearing commenced on September 6, 2014, the date following the issuance of the September 5, 2014 preliminary overpayment determination. Appellant's request for a prerecoumment hearing was dated September 13, 2014 and scanned into the record by OWCP as received on September 18, 2014. OWCP later received a second copy of the request with an October 7, 2014 postmark on the attached envelope. In light of the evidence establishing that OWCP first received appellant's request on September 18, 2014, the Board finds that it erred in using the October 7, 2014 postmark date to determine the timeliness of the request. As appellant's request for a prerecoumment hearing was received within 30 days of OWCP's September 5, 2014 preliminary overpayment determination as required by 20 C.F.R. § 10.432, it is considered timely.¹²

On remand, OWCP shall conduct a prerecoumment hearing on the issues of fault and waiver of recovery of appellant's overpayment of compensation.

⁶ *Id.*; see also *L.C.*, 59 ECAB 569 (2008); *Willie C. Howard*, 55 ECAB 564 (2004).

⁷ *Id.* at § 10.440(b).

⁸ *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997).

⁹ 20 C.F.R. § 10.432; see *Willie C. Howard*, *supra* note 6.

¹⁰ See *Afegalai L. Boone*, 53 ECAB 533 (2002); *John B. Montoya*, 43 ECAB 1148 (1992).

¹¹ 20 C.F.R. § 10.616(a). OWCP has administratively decided that the test used in 20 C.F.R. § 10.616(a) for determining the timeliness of hearing requests should apply to requests for prerecoumment hearings. See 20 C.F.R. § 10.439. Accordingly, timeliness is determined by the postmark of the envelope, if available. Otherwise, the date of the letter itself should be used. See *James B. Moses*, 52 ECAB 465 (2001); *William J. Kapfhammer*, 42 ECAB 271 (1990).

¹² *Id.* See also *S.E.*, Docket No. 11-1632 (issued April 12, 2012).

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for a prerecoupment hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2014 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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