

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANICE O. GOODMAN and U.S. POSTAL SERVICE,  
FRIENDSHIP STATION, Washington, DC

*Docket No. 02-2133; Submitted on the Record;  
Issued April 1, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On November 23, 1998 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back when she tripped over a box in the performance of duty. She stopped work on November 23, 1998. The Office accepted appellant's claim for lumbar sprain and paid all appropriate compensation benefits. On March 23, 1999 appellant returned to full-time limited duty.

In a notice dated October 12, 1999, the Office advised appellant that a preliminary determination had been made that an overpayment of \$12,459.99 occurred during the period March 23 to September 11, 1999 because appellant continued to receive and cash compensation checks after she returned to full-time work on March 23, 1999. The Office found that appellant was not without fault in creating the overpayment. The Office advised appellant that she could request a prerecoupment hearing and enclosed a questionnaire regarding appellant's financial situation.

By decision dated December 20, 1999, the Office finalized the overpayment determination, noting that appellant had failed to respond to its October 12, 1999 preliminary decision. The Office found that appellant was at fault in the creation of the overpayment, and, therefore, was not entitled to waiver of the overpaid amount.

By letter dated December 23, 1999, appellant stated that on October 23, 1999, *via* certified mail, she had in fact responded to the Office's October 12, 1999 preliminary determination. By letter dated January 24, 2000, the Office notified appellant that her timely certified response and request for a prerecoupment hearing had been located and that a hearing would be scheduled as requested.

By decision dated January 24, 2000, the Office vacated its December 20, 1999 final overpayment decision.

Following an oral hearing held on July 27, 2000, in a decision dated September 21, 2000, an Office hearing representative affirmed the Office's preliminary determination that an overpayment had been created in the amount of \$12,459.99, that appellant was not without fault in the creation of the overpayment and was not entitled to waiver of recovery of the overpayment. The appeal rights attached to the decision informed appellant that she could either request reconsideration before the Office or request an appeal before the Board.

By letter dated August 1, 2001 and received by the Office on August 7, 2001, appellant requested additional review of her claim. By letter dated August 9, 2001, the Office instructed appellant to follow the appeal rights attached to the original decision and further informed appellant that the only right of review on a final overpayment decision was an appeal to the Board. By letter to the Office dated August 22, 2001 and received by the Office on October 19, 2001, appellant requested an appeal of the prior decision and a review of the written record before an Office representative.

In a decision dated December 5, 2001, the Office denied appellant's request for a review of the written record as she had already had a hearing on the same issue. In an exercise of its discretion, the Office also noted that appellant was not entitled to a hearing because the issue in the case could be equally well addressed through the reconsideration process.

By letter dated February 11, 2002, appellant requested reconsideration of the prior overpayment decision and submitted additional evidence in support of her request.

By letter dated July 26, 2002, the Office informed appellant that there was no right to request reconsideration following a final overpayment decision and that her only avenue for review was to request an appeal before the Board.

The Board finds that the Office properly denied appellant's request for a hearing on the September 21, 2000 final overpayment decision, as she was not entitled to such a hearing under section 20 C.F.R. § 10.440(b) of the Federal Employees' Compensation Act's implementing regulations.

The only decision before the Board in this appeal is that dated December 5, 2001 in which the Office denied appellant's request for a hearing following the final overpayment determination. As more than one year elapsed between the date of the Office's most recent merit decision dated September 21, 2000 and the filing of appellant's appeal on August 14, 2002, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>1</sup>

In this case, the Office issued a final overpayment decision on September 21, 2000 finding that an overpayment of \$12,459.99 had occurred and that appellant was at fault in its creation. Prior to issuing the September 21, 2000 decision, the Office granted appellant's request for an oral precoupment hearing before an Office representative and allowed appellant the opportunity to testify on her own behalf and to submit evidence supporting her contention that

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed. Section 501.2 provides that the Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. The Board is unable to consider evidence for the first time on appeal; see *Marlene K. Cline*, 43 ECAB 580 (1992).

she was not at fault in the creation of the overpayment. However, appellant did not submit persuasive evidence demonstrating that she was without fault in the creation of the overpayment.

Appellant thereafter requested additional review of her claim, including a review of the written record or a second oral hearing in letters dated August 1 and 22, 2001. By decision dated December 5, 2001, the Office found that appellant was not entitled to a review of the written record or an oral hearing. Appellant again requested reconsideration, and in a letter dated July 26, 2002, the Office informed appellant that final overpayment decisions did not carry the right to reconsideration and that her only avenue of review was an appeal.

Section 5 U.S.C. § 8124(b)(1) of the Act provides that a claimant “not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on [her] claim.” However, section 10.440(b)<sup>2</sup> of the Office’s regulations provides that “[t]he only review of a final decision concerning an overpayment is to the Board. The provisions of 5 U.S.C. § 8124(b) (concerning hearings) and 5 U.S.C. § 8128(a) (concerning reconsiderations) do not apply to such a decision.”

Therefore, the Office properly denied appellant’s request for a hearing or review of the written record on the final overpayment decision, as appellant is not entitled to a hearing on the final overpayment decision under section 10.440(b) of the Office’s regulations.

The decision of the Office of Workers’ Compensation Programs dated December 5, 2001 is hereby affirmed.

Dated, Washington, DC  
April 1, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.440(b).