

surgeries. This is the second appeal in this case. In the prior appeal, the Board found that appellant was not entitled to compensation for verified medical appointments based on an average workweek of more than 37 hours. The Board also found that appellant had not met his burden of proof to establish entitlement to any additional compensation for the specific dates of disability from September 1993 to March 2001. The facts of the case are fully set out in the Board's prior decision and are incorporated herein by reference.²

On March 24, 2004 the Office made a preliminary determination that a \$175.78 overpayment had occurred because appellant was reimbursed for pharmacy services in error.³ The Office found that appellant was at fault in the creation of this overpayment because he accepted a payment that he knew or should have known was incorrect. The Office advised appellant that, if he disagreed with the fact or amount of the overpayment or the finding of fault, he had a right to submit any evidence or arguments, and the right to request a precoupment hearing within 30 days.

On July 2, 2004 appellant requested a precoupment hearing on the issues of fault and a possible waiver of the overpayment. He explained that he had not realized that he had received an incorrect payment.

By decision dated June 21, 2005, the hearing representative denied appellant's request for a hearing on the grounds that his request was untimely.⁴ 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 precoupment hearing within 30 days of the written notice of overpayment.⁵ Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.⁶

² 55 ECAB ___ (Docket No. 04-1138, issued August 27, 2004).

³ The Board notes that, at the time the Office issued its preliminary overpayment decision, the Board had jurisdiction over the merits of the Office's December 19, 2003 decision. However, as the issue before the Board was appellant's entitlement to compensation rather than a request for a recoupment hearing pertaining to an overpayment, there was no concurrent jurisdiction.

⁴ The Board notes that the Office has not issued a final determination on the overpayment as of the date of the filing of this appeal. Therefore, the Board does not have jurisdiction to consider the merits of the overpayment. (The Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case). 20 U.S.C. § 501.2(c).

⁵ The Board further notes that, under its own procedures, debt collection actions on overpayments of less than \$200.00 may be administratively terminated at any time after the overpayment has been identified if the cost of further collection action would exceed recovery expected. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.3a (May 2004).

⁶ *Id.* See *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342, issued May 27, 2004).

ANALYSIS

By its preliminary overpayment determination dated May 24, 2004, the Office provided appellant with written notice of his right to a precoupment hearing and informed him that, in order to protect his right, he must request such a hearing within 30 days of the date of the letter. On July 2, 2004 appellant requested a precoupment hearing. Appellant accordingly failed to request a hearing within 30 days of the Office's preliminary overpayment determination. Pursuant to 20 C.F.R. § 10.432, such failure to timely request a precoupment hearing constitutes a waiver of his right to do so. The Office, therefore, properly denied appellant's request for a precoupment hearing.⁷ The hearing representative 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 the only review of a final decision concerning an overpayment is to the Federal Employees' Compensation Appeals Board.⁸ The Office's finding in this regard, however, is harmless error as appellant's untimely request for a precoupment hearing waived his rights to review of the preliminary decision.

CONCLUSION

The Board finds that appellant failed to file a timely request for a precoupment hearing and, therefore, the Office properly denied his request.⁹

⁷ *Id.*

⁸ 20 C.F.R. §§ 10.432 & 10.440.

⁹ The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its December 24, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 21, 2005 is affirmed.

Issued: January 12, 2006
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