

FACTUAL HISTORY

On November 12, 2002 appellant, then a 51-year-old secretary, was injured when she tripped on some steps and fell. The Office accepted the claim for a lumbar strain, right knee contusion and left elbow contusion. It also accepted a left shoulder condition. On May 19, 2003 appellant underwent an authorized left shoulder arthroscopy with debridement of the rotator cuff tear and subacromial decompression and a mini open rotator cuff repair. She returned to light duty on September 15, 2003. The Office paid compensation for intermittent periods of time lost due to the shoulder injury and surgery. Appellant resigned from her light-duty position in 2003.

The employing establishment offered appellant the position of modified switchboard operator. In an April 13, 2005 letter, the Office advised appellant that the offered position was medically suitable and provided 30 days to accept the position or provide a valid reason for not accepted it. Appellant did not provide reasons for refusing the offered position. The employing establishment verified on November 9, 2005 that appellant's refusal of the position continued and that it remained open and available.

In a November 10, 2005 decision, the Office terminated appellant's monetary compensation benefits effective November 14, 2005 on the grounds she refused suitable work.

By decision dated October 12, 2006, the Office granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity. The period of the award ran from December 15, 2005 to September 3, 2006.

On September 17, 2007 the Office notified appellant of its preliminary determination that she received an overpayment of \$17,571.49 for the period December 15, 2005 to September 3, 2006 because she was erroneously paid a schedule award after it terminated her entitlement to monetary compensation in its November 10, 2005 decision. It found that she was at fault in creating the overpayment as she was know or should have reasonably known that she the payment was incorrect after the November 10, 2005 termination decision. The Office requested that appellant complete an enclosed overpayment recovery questionnaire and submit supporting financial documents. It notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

By decision dated January 22, 2008, the Office finalized its finding that appellant received a \$17,571.49 overpayment from December 15, 2005 to September 3, 2006 and that she was at fault in creating the overpayment. It advised her that the full amount of the overpayment was due and payable or to make arrangements for repayment. In a separate memorandum to file, the Office noted that appellant had not responded to its preliminary determination of overpayment and had not submitted any financial information.

In an overpayment action request form signed July 15, 2009, appellant requested a prerecoupment hearing by teleconference. In a decision dated August 18, 2009, the Office denied her request for a hearing finding that she did not request a hearing from the preliminary notice of overpayment and that the final decision was not subject to a hearing under 5 U.S.C. § 8124.

LEGAL PRECEDENT

The Office 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.² The Office's regulations further provide that a claimant may request a prerecoupment hearing with respect to an overpayment.³ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁴ The only right to a review of a final overpayment decision is with the Board.⁵ The hearing provisions of 5 U.S.C § 8124(b) do not apply to a final overpayment decision.⁶

ANALYSIS

The Office's September 17, 2007 preliminary overpayment determination notified appellant of her right to request a prerecoupment hearing within 30 days. The preliminary determination was sent to appellant's address of record. As noted, if a claimant does not request a hearing within 30 days, it is considered a waiver of the right to a hearing. When the final overpayment decision is issued, there is no right to a hearing or a review of the written record. The only right to appeal is to the Board.⁷ In this case, appellant requested a prerecoupment hearing on July 15, 2009, more than 18 months after the January 22, 2008 final overpayment decision. Once the Office issued the final overpayment decision on January 22, 2008, her only right of appeal was to the Board. The Board finds that the Office properly denied appellant's July 15, 2009 request for a hearing as she was not entitled to a hearing with respect to a final overpayment decision.⁸

CONCLUSION

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

² 20 C.F.R § 10.431.

³ *Id.* at § 10.432.

⁴ *Id.*

⁵ *Id.* at § 10.440(b).

⁶ *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997).

⁷ *Id.* at § 10.440(b).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation decision dated August 18, 2009 is affirmed.

Issued: June 21, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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