

overpayment determination. In another decision dated June 6, 2011, OWCP again finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$10,694.31 and that she was at fault in its creation.

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 prerecoupment 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's regulations provide that the timeliness of the request is determined by its postmark or other carrier's date marking.³ The 30-day period for determining the timeliness of appellant's request for a prerecoupment hearing commenced on March 1, 2011, the date following the issuance of the February 28, 2011 preliminary overpayment determination. Appellant's request for a prerecoupment hearing was dated March 4, 2011 and received by OWCP on April 4, 2011. The Board notes that OWCP did not retain or scan into the record the envelope containing her request for a prerecoupment hearing. Consequently, the date of appellant's hearing request, March 4, 2011, is used to determine its timeliness. As it was made within 30 days of the issuance of the February 28, 2011 preliminary overpayment determination as required by 20 C.F.R. § 10.432, it is considered timely.⁴

On remand, OWCP's Branch of Hearings and Review shall conduct the prerecoupment hearing and following any necessary development issue an appropriate decision regarding the fact and amount of overpayment, whether waiver of recovery of the overpayment is warranted and if not, the rate of recovery.

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

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

³ 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 prerecoupment hearings. 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).

⁴ *Id.*

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 6, 2011 are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 12, 2012
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