

ISSUE

The issue is whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely.

FACTUAL HISTORY

On November 3, 2009 appellant, then a 58-year-old management program assistant, tripped and fell injuring her left shoulder. OWCP accepted the claim for closed fracture of the left upper end of humerus. Appellant stopped work on November 3, 2009. OWCP paid appropriate benefits and eventually placed her on its periodic compensation rolls, where she received compensation by direct deposit. Appellant returned to light-duty work on March 16, 2010 for three days a week and on a full time basis effective April 22, 2010.

On October 26, 2010 OWCP informed appellant of its preliminary determination that she received an overpayment of \$3,552.11, because she was paid in error for the period March 16 to April 10, 2010. It noted that appellant's compensation benefits were terminated effective March 16, 2010 but she was paid a complete check for the period March 14 to April 10, 2010 in the amount of \$2,528.00. Further, appellant was paid an additional 64 hours of leave without pay from March 15 to April 7, 2001 in the amount of \$1,204.68. It further advised her of its preliminary determination that she was with fault in the creation of the overpayment as she was aware or should have reasonably been aware that she was not due compensation benefits for loss of pay and wage earning at the same time. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, 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.

In response to the preliminary decision, appellant's sister telephoned OWCP on November 17, 2010. She indicated that appellant had a stroke and that she was handling everything for appellant as she could not take care of her personal business. In a later call of the same date, appellant's sister indicated that she received the paperwork regarding the overpayment but because of appellant's stroke, it would be difficult to pay back at this time. No further evidence regarding the overpayment was received. The record did not contain evidence indicating that appellant's sister was an authorized representative.

By decision dated January 13, 2011, OWCP finalized its determination that appellant received an overpayment of \$3,552.11 during the period March 14 through April 10, 2010 and that she was with fault in creating the overpayment. It advised her to send in a check for the full amount of the overpayment or to contact OWCP to make other arrangements for repayment.

On January 24, 2011 appellant's sister telephoned OWCP. OWCP noted that appellant's file contained no release or authorization from her for her sister and as such OWCP could not communicate with her sister until it received such written authorization.

On February 1, 2011 appellant requested a prerecoupment hearing on the issues of fault and a possible waiver of the overpayment with OWCP's branch of Hearings and Review. She

submitted a statement describing her health and financial issues along with a completed overpayment recovery questionnaire.

By decision dated March 2, 2011, OWCP denied appellant's request for a prerecoupment hearing as untimely.

LEGAL PRECEDENT

OWCP 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.³ The regulations further provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁴ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁵ The only right to a review of a final overpayment decision is to the Board.⁶ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.⁷

ANALYSIS

OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in a letter dated October 26, 2010. It informed her that she could request a telephone conference, a prerecoupment hearing or a final decision based on the written evidence within 30 days of the date of the letter. Appellant requested a prerecoupment hearing on February 1, 2011 after OWCP had finalized its overpayment determination on January 13, 2011. As her request was more than 30 days after OWCP's October 26, 2010 notification of overpayment, it was untimely. Thus, under the regulations appellant waived her right to a prerecoupment hearing.⁸ Further, FECA provides that the hearing provisions of section 8124(b) do not apply to a final overpayment decision.⁹ Accordingly, OWCP properly denied appellant's request for a prerecoupment hearing.

On appeal, appellant argues that her health and financial circumstances surrounding the overpayment should be taken into consideration as well as her attempts to contact OWCP through her sister. The Board, however, has no jurisdiction over the merits of the claim.¹⁰

³ 20 C.F.R. § 10.431.

⁴ *Id.* at § 10.432.

⁵ *Id.*

⁶ *Id.* at § 10.440(b).

⁷ *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997).

⁸ *Id.*

⁹ *Id.* at § 10.440(b); see also *Philip G. Feland*, *supra* note 7.

¹⁰ See *supra* note 2.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 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