

ISSUE

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

FACTUAL HISTORY

On March 15, 1989 appellant, then a 49-year-old food service worker, filed a traumatic injury claim alleging that on March 8, 1989 she sustained a muscle strain in her lower back while pulling a food cart off an elevator. She stopped work on March 15, 1989. OWCP accepted the claim for lumbosacral strain and an aggravation of preexisting degenerative disc disease. It paid benefits and placed appellant on the periodic compensation rolls, where she received wage-loss compensation first by check and then by direct deposit.

On September 21, 2011 OWCP informed appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$712.09 from November 20, 2009 through May 7, 2011 because she was paid at the 75 percent augmented rate but had no eligible dependents. 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 entitled to compensation at the augmented rate as she had no eligible dependent after November 20, 2009.

Appellant requested a prerecoupment hearing. In a March 15, 2012 decision, OWCP's hearing representative found the case not in posture for decision. It was remanded for further development as to whether appellant's daughter qualified as a dependent from November 19, 2009 through May 7, 2011. OWCP was directed to determine whether the daughter was a full-time student and/or when she could not support herself because of mental or physical disability.

In a March 23, 2012 letter, OWCP informed appellant of the medical evidence required to establish that her daughter was an eligible dependent due to having a mental or physical condition that caused her to be incapable of self-support. Appellant was afforded 30 days to provide such information. In response, OWCP received an April 26, 2012 report from Dr. John D. McKee, a Board-certified internist, who noted that appellant's daughter was a patient at Digestive Health center treated for an ongoing chronic medical condition. Dr. McKee advised that appellant was financially responsible for her daughter's medical expenses.

On May 23, 2012 OWCP informed appellant of its preliminary determination that she received an overpayment of \$4,556.24 for the period May 10, 2008 through May 7, 2011 because she received augmented compensation during a period she no longer had an eligible dependent.³ It 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 augmented compensation benefits during periods there was no eligible dependent. OWCP 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

³ OWCP found appellant had an overpayment for the following periods: May 10, 2008 through January 4, 2009; August 1, 2009 through January 3, 2010; and August 7, 2010 through May 7, 2011.

could request a telephone conference, a final decision based on the written evidence or a precoupment hearing. Appellant did not respond to the preliminary decision.

By decision dated June 26, 2012, OWCP finalized the overpayment of \$4,556.24 for the period May 10, 2008 through May 7, 2011. It found that appellant was with fault in creating the overpayment. OWCP advised her that \$100.00 would be deducted from her continuing compensation payments beginning July 29, 2012 until the overpayment was absorbed.

On July 2, 2012 OWCP received a fax from appellant's congressional representative which included appellant's request for a precoupment hearing and an overpayment recovery questionnaire both dated June 18, 2012. On July 13, 2012 it received a July 5, 2012 report from Dr. McKee.

By decision dated August 24, 2012, OWCP denied appellant's request for a precoupment 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.⁴ The regulations further provide that a claimant may request a precoupment hearing with respect to an overpayment.⁵ Failure to request the precoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁶ The only right to a review of a final overpayment decision is to the Board.⁷ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.⁸

ANALYSIS

OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in a letter dated May 23, 2012. It informed her that she could request a telephone conference, a precoupment hearing or a final decision based on the written evidence within 30 days of the date of the letter. OWCP received appellant's request for a precoupment hearing by fax on July 2, 2012, after it had finalized its overpayment determination on June 26, 2012. As her request was received by OWCP more than 30 days after the May 23, 2012 notification of overpayment, it was untimely. Under the applicable regulations, appellant waived her right to a precoupment hearing.⁹ Further, FECA provides

⁴ 20 C.F.R. § 10.431.

⁵ *Id.* at § 10.432.

⁶ *Id.*

⁷ *Id.* at § 10.440(b).

⁸ *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997).

⁹ *Id.*

that the hearing provisions of section 8124(b) do not apply to a final overpayment decision.¹⁰ Accordingly, OWCP properly denied appellant's request for a prerecoument hearing.

On appeal, appellant argues the overpayment decision is contrary to fact and law. The Board, however, has no jurisdiction over the merits of the claim.¹¹ Appellant also submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹²

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ *Supra* note 7; see also *Philip G. Feland, supra* note 8.

¹¹ *See supra* note 1.

¹² 20 C.F.R. § 501.2(c).