

On appeal, appellant contends that OWCP erred in denying his request for a prerecoupment hearing as he had previously timely filed a request.

ISSUE

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

FACTUAL HISTORY

On May 7, 2010 appellant, then a 43-year-old auditor, alleged that on October 11, 2009 while he was in Iraq and performing physical fitness he felt a pop in his back and his left arm went numb immediately. OWCP accepted the claim for upper infraspinatus arm and shoulder sprains, neck sprain and C5-6, C6-7 herniated discs (left forminal) with left C-7 cervical radiculopathy. It placed appellant on the periodic rolls for temporary total disability effective July 5, 2011. OWCP authorized cervical surgery which was performed on July 27, 2011. Appellant returned to full-duty modified work on June 20, 2012 with no loss of wages.

On October 3, 2012 OWCP informed appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$16,606.33, because he was paid in error for the period June 20 through August 25, 2012. It found that appellant was at fault in the creation of the overpayment as he accepted payments he knew or should have known were incorrect. Appellant was asked to complete an enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

On October 29, 2012 appellant requested a prerecoupment telephonic hearing before an OWCP hearing representative.

By decision dated January 16, 2013, an OWCP hearing representative vacated the October 3, 2012 preliminary overpayment determination and remanded the case as she was unable to determine whether the calculations were correct. She found that the record contained no evidence as to appellant's actual earnings upon his return to work.

On May 12, 2013 OWCP informed appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$16,606.33, from June 20 through August 25, 2012, after he returned to work without wage loss. It found that appellant was without fault in the creation of the overpayment in the amount of \$2,726.41 for the period June 20 to 30, 2012, but was at fault for the remaining amount of \$13,879.92 from July 1 to August 25, 2012. OWCP informed appellant that he had been found at fault in the creation of the overpayment for the period July 1 to August 25, 2012 as he accepted payments he knew or should have known were incorrect. It requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

On June 26, 2013 OWCP received appellant's undated request for a prerecoupment hearing. The postmark on the attached envelope was June 20, 2013.

By decision dated July 15, 2013, 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

The Board finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely. OWCP notified him of its preliminary determination that he received an overpayment of compensation in a letter dated May 17, 2013. It informed appellant that he 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. OWCP's implementing regulations are specific as to the 30-day time limitation in which to request a prerecoupment hearing. Appellant's request for a prerecoupment hearing was postmarked June 20, 2013 more than 30 days after OWCP's notification of overpayment dated May 17, 2013. As provided in OWCP regulations, his hearing request was therefore untimely and he waived his right to a prerecoupment hearing.⁸

On appeal, appellant contended that he had filed a timely request for a prerecoupment hearing on October 29, 2012. The record establishes, however, that an OWCP hearing representative set aside the October 3, 2012 preliminary overpayment determination. The case was remanded for further development of the overpayment determination. After development of the evidence, OWCP issued a new preliminary determination of overpayment on May 17, 2013. It provided appellant with notification as to a prerecoupment hearing and the necessity to make a request within 30 days. As noted, OWCP regulations are clear that any request for a hearing

³ 20 C.F.R. § 10.431; *see also* A.G., 58 ECAB 625 (2007).

⁴ *Id.* at § 10.432.

⁵ *Id.*; *see also* L.C., 59 ECAB 569 (2008); *Willie C. Howard*, 55 ECAB 564 (2004).

⁶ 20 C.F.R. § 10.440(b).

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

⁸ *H.K.*, Docket No. 11-543 (issued November 25, 2011); *James B. Moses*, 52 ECAB 465 (2001); *Earl D. Long*, 50 ECAB 464 (1999).

must be made within 30 days of the preliminary determination.⁹ Accordingly, it properly denied his request for a prerecoument hearing as it was not timely.¹⁰ Appellant also presented arguments regarding the date he received the May 17, 2013 preliminary notice of overpayment, incorrect information and the lack of page numbering. None of these arguments is relevant to the timeliness of his request. He did not establish any error on the part of OWCP in denying his request for a prerecoument hearing.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 15, 2013 is affirmed.

Issued: April 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁹ 20 C.F.R. § 10.432.

¹⁰ *Supra* note 8