

**United States Department of Labor
Employees' Compensation Appeals Board**

P.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Denver, CO, Employer**

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**Docket No. 14-1432
Issued: October 7, 2014**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2014 appellant, through his attorney, filed a timely appeal from an April 14, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for a prerecouplement hearing. Because more than one year has elapsed from the most recent merit decision dated September 13, 2000¹ to the filing of the appeal on June 4, 2014 and pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

¹ For final adverse decisions of OWCP issued before November 19, 2008, a claimant had up to one year to file a Board appeal. See 20 C.F.R. § 501.3(d)(2) (2008).

² 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On November 9, 1988 appellant, then a 52-year-old food service worker, filed a traumatic injury claim alleging that he slipped and fell hitting his chest on the edge of a table top railing on November 8, 1988. He stated that he sustained bruised ribs as a result of this incident. OWCP accepted appellant's claim for brachial plexus lesions, synovitis and tenosynovitis on October 26, 1989 and left ulnar irritation on January 11, 1990. It reduced his compensation benefits based on his capacity to earn wages as a self-service gas station attendant on February 27, 1991. By decision dated January 27, 1992, OWCP granted appellant a schedule award for five percent permanent impairment of his left arm.

In a letter dated March 12, 1999, OWCP informed appellant of the preliminary determination that he had received an overpayment of compensation in the amount of \$6,121.42 due to the death of his dependent. By decision dated September 13, 2000, it waived the recovery of this overpayment.

OWCP made a preliminary finding of overpayment on December 5, 2013 in the amount of \$8,974.23 because appellant's compensation payments had not been offset or reduced for a portion of his social security retirement benefits earned while in federal service. It found that he was not at fault in the creation of the overpayment. OWCP provided appellant with his appeal rights noting that he had 30 days to request a prercoupmnt hearing before a representative of the Branch of Hearings and Review, that he could request a telephone conference or that he could request a final decision from the district office. It also provided him with an appeals form to complete and submit.

Appellant requested a prercoupmnt hearing on a form received by the Branch of Hearings and Review on January 27, 2014. The envelope indicated that the postmark was January 22, 2014. Appellant also submitted an overpayment recovery questionnaire and additional financial documents. He provided arguments in a narrative statement dated January 20, 2014.

By decision dated April 14, 2014, the Branch of Hearings and Review denied appellant's request for a prercoupmnt 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 prercoupmnt hearing with respect to an overpayment.⁴ Failure to request the prercoupmnt hearing within 30 days shall constitute a waiver of the right

³ 20 C.F.R. § 10.431; *see also J.J.*, Docket No. 13-1905 (issued April 8, 2014); A.G., 58 ECAB 625 (2007).

⁴ 20 C.F.R. § 10.432.

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 prerecougment hearing as untimely. OWCP notified him of its preliminary determination that he received an overpayment of compensation in a letter dated December 5, 2013. It informed appellant that he could request a telephone conference, a prerecougment 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 prerecougment hearing. Appellant's request for a prerecougment hearing was postmarked January 22, 2014 more than 30 days after OWCP's notification of overpayment dated December 5, 2013. As provided in OWCP regulations, his hearing request was therefore untimely and he waived his right to a prerecougment hearing.⁸

CONCLUSION

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

⁵ *Id.*, *J.J.*, *supra* note 2; *L.C.*, 59 ECAB 569 (2008).

⁶ 20 C.F.R. § 10.440(b).

⁷ *Id.*; *J.J.*, *supra* note 2.

⁸ *J.J.*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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