

FACTUAL HISTORY

On July 7, 2011 appellant, then a 60-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed asthma as a result of her federal employment. OWCP accepted the claim on November 4, 2011 for exacerbation of extrinsic asthma. On April 29, 2013 appellant filed a Form CA-7 claim for compensation for the period February 26 to March 1, 2013 and a second Form CA-7 for the period March 5 to 11, 2013.²

Commencing January 6, 2014 appellant began submitting Form CA-7 claims for compensation for intermittent periods in 2010. She also claimed compensation for intermittent periods in 2011. By decision dated August 11, 2014, OWCP denied appellant's claims for compensation for the following periods: June 5 to July 6, July 14 to 29, October 31 to November 2, and November 16 to 19, 2010.

Appellant submitted a request for reconsideration on September 16, 2014, along with additional evidence. By decision dated December 1, 2014, OWCP modified the August 11, 2014 decision. With respect to claimed disability in 2010, it found the medical evidence of record supported disability from July 19 to 25, 2010, and therefore that period was found to be "payable." OWCP also found that disability was established for July 6 to 11, and 28, 2010.

On December 5, 2014, OWCP deposited the following compensation to appellant's bank account: \$68.08 for June 19, 2010, \$136.16 for July 6 to 7, 2010, \$476.56 for July 19 to 26, 2010, and \$136.16 for November 16 to 17, 2010.

By letter dated January 20, 2015, OWCP advised appellant of a preliminary determination that an overpayment of \$816.96 was created. It found that the payments deposited on December 5, 2014 represented an overpayment because appellant had been paid compensation for total disability on those dates from another claim (OWCP File No. xxxxxx047).³ OWCP indicated that it had made a preliminary determination that appellant was at fault because she accepted payments she should have known were incorrect. Appellant was advised of actions she could take within 30 days, including requesting a prerecoupment hearing with a hearing representative or a telephone conference with the district office. With respect to all of the possible actions, OWCP noted that appellant should submit a completed Form OWCP-20 overpayment recovery questionnaire and supporting evidence.

On March 3, 2015 OWCP received a request for a telephone conference with the district office. The request was dated February 16, 2015, and indicated that appellant was contesting that an overpayment occurred and the finding that she was at fault. The record does not contain a postmark date or other carrier date markings. Appellant also submitted a February 16, 2015

² By decision dated June 4, 2013, OWCP denied a claim for compensation from March 5 to 12, 2013. It vacated the June 4, 2013 decision on September 16, 2013.

³ File No. xxxxxx047 is a master file that includes several claims for injuries to appellant's back. Evidence from that file indicates that appellant was receiving compensation for total disability on the periodic rolls during the period June 19 to November 17, 2010.

letter requesting a telephone conference and providing arguments with respect to the overpayment issues, as well as a FECA benefit statement.

By decision dated May 4, 2015, OWCP finalized its preliminary determination that an overpayment of \$816.96 had occurred and appellant was at fault in creating the overpayment. It noted that appellant had submitted a February 16, 2015 request for a telephone conference, but found appellant did not submit a completed Form OWCP-20 or supporting financial documents.

LEGAL PRECEDENT -- ISSUE 1

OWCP is required to follow certain procedures in overpayment cases. 20 C.F.R. § 10.431 provides that, before seeking recovery of an overpayment, it will advise a claimant in writing that the overpayment exists, and the amount of the overpayment.⁴ The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.⁵ Additionally, OWCP is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.⁶ Lastly, the preliminary notice must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.⁷ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a precoupment hearing requested within 30 days.⁸

ANALYSIS -- ISSUE 1

OWCP issued a January 20, 2015 preliminary determination of an overpayment of \$816.96, finding that appellant was at fault in creating the overpayment. Appellant was advised of actions she could take, including the option to request a telephone conference with OWCP within 30 days.

By letter dated February 16, 2015, received on March 3, 2015, appellant requested a telephone conference to contest fact of overpayment and the finding of fault. No telephone conference was held.

In the May 4, 2015 final overpayment decision, OWCP acknowledged that appellant had submitted a February 16, 2015 request for a telephone conference. The Board notes that the record does not contain evidence of a postmark date. The Board has found that, with respect to requests for precoupment hearings, if the postmark date is not available, the date of the request

⁴ 20 C.F.R. § 10.431(a).

⁵ *Id.* at § 10.431(b).

⁶ *Id.* at § 10.431(c).

⁷ *Id.* at § 10.431(d).

⁸ *Id.* at § 10.432.

is used to determine timeliness.⁹ In this case, the request for a telephone conference was dated February 16, 2015. As this was within 30 days of the January 20, 2015 preliminary overpayment determination, the request was timely.¹⁰

The January 20, 2015 preliminary overpayment determination specifically provides that a claimant may request a telephone conference with OWCP. As indicated above, appellant did timely request a telephone conference. The only finding made by OWCP was that appellant did not submit an OWCP-20 overpayment recovery questionnaire or supporting financial documents. The January 20, 2015 preliminary overpayment determination indicated that appellant should submit a Form OWCP-20 and supporting financial documentation. However, it also provided a similar request with respect to a request for a precoupment hearing. The failure to submit a Form OWCP-20 does not preclude a claimant from pursuing a telephone conference or a precoupment hearing that is timely requested.¹¹ One of the purposes of a hearing or a telephone conference is to provide an opportunity for a claimant to clarify issues regarding the overpayment and provide relevant information with respect to overpayment and waiver issues. Appellant's failure to submit a completed Form OWCP-20 with her request for a telephone conference does not preclude her entitlement to a telephone conference. Appellant timely requested a telephone conference with respect to the issues of fact of overpayment, finding of fault, and waiver. OWCP should have provided appellant an opportunity to address the issues in a telephone conference.

The case will be remanded to OWCP to provide appellant a telephone conference. After such further development as is deemed necessary, it should issue a proper decision on the overpayment issues. In light of the Board's decision on the telephone conference, the remaining issues will not be addressed on this appeal.

CONCLUSION

The Board finds the case is not in posture for decision.

⁹ *S.E.*, Docket No. 11-1632 (issued April 12, 2012).

¹⁰ *See D.G.*, Docket No. 11-650 (issued September 28, 2011); *S.R.*, Docket No. 09-1020 (issued November 3, 2009).

¹¹ *See, e.g., V.B.*, Docket No. 15-0157 (issued March 16, 2015) (appellant timely requested a telephone conference, but did not submit financial information until the telephone conference was held); *E.W.*, Docket No. 15-0544 (issued July 16, 2015) (appellant timely requested a precoupment hearing, without submitting an OWCP-20 or financial documents. The hearing was held, and following the hearing, appellant submitted financial information).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2015 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: October 21, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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