

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the prior decision are herein incorporated by reference. The relevant facts are as follows.

On July 11, 1997 appellant, then a 47-year-old general clerk, filed an occupational disease claim (Form CA-2) alleging that on July 24, 1996 she first became aware that her bilateral thumb arthritis had been aggravated by her federal employment duties. She did not stop work. OWCP accepted the claim for aggravation of bilateral thumb arthritis and aggravation of bilateral wrist arthritis.³

Appellant received intermittent wage-loss compensation benefits on the supplement rolls from October 14, 2008 until April 9, 2011. OWCP placed appellant on the periodic rolls for temporary total disability effective April 10, 2011.⁴

On March 17, 2014 OWCP referred appellant for vocational rehabilitation services.⁵

By letter dated October 23, 2014, counsel advised that appellant had returned to two part-time jobs on August 12, 2014. In a letter dated October 24, 2014, appellant detailed her employment and pay rates for her work at HR Imaging Partners, Inc. and Delaware County Center YMCA.

By a preliminary determination dated December 19, 2014, OWCP informed appellant of an overpayment of compensation in the amount of \$1,186.83 because she had returned to full-time private sector work, effective August 12, 2014, but continued to receive compensation on the periodic rolls through August 29, 2014. It found that she was with fault in the creation of the overpayment. OWCP requested that appellant complete an 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

² Docket No. 16-0588 (issued August 8, 2016).

³ This was assigned OWCP File No. xxxxxx485. On October 16, 2015 OWCP combined OWCP File Nos. xxxxxx728 and xxxxxx103, with xxxxxx485 as the master file. Under OWCP File No. xxxxxx103, it accepted the claim for temporary aggravation of bilateral wrist arthritis which resolved effective May 10, 1994. OWCP denied appellant's claim for aggravation of bilateral wrist arthritis under OWCP File No. xxxxxx728.

⁴ In a December 29, 2010 letter, the employing establishment notified OWCP that no work was available for appellant within her restrictions due to the National Reassessment Program process.

⁵ By decision dated December 10, 2014, OWCP reduced appellant's compensation to zero pursuant to 5 U.S.C. § 8113(b). It found that appellant's failure to undergo essential preparatory rehabilitation efforts did not allow OWCP to determine what her wage-earning capacity would have been if she had undergone testing and rehabilitation. On December 16, 2014 appellant requested a hearing before an OWCP hearing representative. By decision dated December 1, 2015, OWCP's hearing representative affirmed the December 10, 2014 decision. On February 8, 2016 appellant filed an appeal to the Board of the December 1, 2015 decision. By decision dated August 8, 2016, the Board determined that OWCP had not met its burden of proof to reduce appellant's compensation effective December 10, 2014 and reversed the December 1, 2015 decision. The Board found that OWCP failed to follow its procedures once appellant advised it that she had returned to work and failed to determine whether she had established good cause for failure to cooperate with vocational rehabilitation efforts. *Supra* note 2.

based on the written evidence, or a prerecoumment hearing. No response was received within the time allotted.

By decision dated July 7, 2016, OWCP finalized the preliminary overpayment finding of a \$1,186.83 overpayment of compensation for the period August 12 to 29, 2014. It found that appellant continued to receive compensation on the periodic rolls even though she had returned to full-time work in the private sector on August 12, 2014. OWCP found her at fault in creating the overpayment as she knew, or reasonably should have known, that she was not entitled to receive wage-loss compensation once she had returned to work. It further found that, as appellant was at fault in creating the overpayment, it was not subject to waiver of recovery. OWCP directed recovery of the overpayment by a single payment of \$1,186.83 within 30 days.⁶

On December 29, 2016 OWCP received appellant's December 7, 2016 request for a prerecoumment hearing. Appellant alleged that an overpayment did not exist

By decision dated February 2, 2017, OWCP denied, as untimely, appellant's request for a prerecoumment hearing as the request had not been made within 30 days of the December 19, 2014 preliminary determination. It noted that the overpayment had been finalized in the July 7, 2016 decision.

LEGAL PRECEDENT

OWCP's 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.⁷ The regulations further provide that a claimant may request a prerecoumment hearing with respect to an overpayment.⁸ Failure to request the prerecoumment hearing within 30 days shall constitute a waiver of the right to a hearing.⁹

The only review of a final decision concerning an overpayment is an appeal to the Board. The provisions of 5 U.S.C. §§ 8124(b) and 8128(a) regarding hearings and reconsideration do not apply to a final overpayment decision.¹⁰

ANALYSIS

The overpayment action request form that accompanied the December 19, 2014 preliminary determination was specific as to the 30-day time limitation and the method for

⁶ The Board does not have jurisdiction over the July 7, 2016 overpayment decision as it was issued more than 180 days from the date of this appeal. *See* 20 C.F.R. § 501.3(e).

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

⁸ *Id.* at § 10.432.

⁹ *Id.*; *see also* D.P., Docket No. 13-630 (issued August 2, 2013); M.B., Docket No. 12-19 (issued October 5, 2012); L.C., 59 ECAB 569 (2008); Willie C. Howard, 55 ECAB 564 (2004).

¹⁰ 20 C.F.R. § 10.440(b).

requesting a prerecoupment hearing, including the particular address where the signed, written request was to be mailed. OWCP finalized the overpayment on July 7, 2016. It received appellant's request for a prerecoupment hearing on December 29, 2016. OWCP's implementing regulations specify that evidence and argument regarding a prerecoupment hearing must be presented to OWCP within 30 days of the written preliminary notice of overpayment or the right to the prerecoupment hearing is waived.¹¹

OWCP's procedures for requesting a prerecoupment hearing also specify that additional evidence and arguments must be submitted by the claimant within 30 days of the date of the letter.¹² As the request for a prerecoupment hearing was not received by OWCP within 30 days of December 19, 2014, the February 2, 2017 decisions of OWCP denying appellant's request for a prerecoupment hearing was proper under the law and facts of this case.

CONCLUSION

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

¹¹ See *supra* note 7.

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions, Preliminary and Final Decisions* Chapter 6.200.4(a) (June 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2017 is affirmed.

Issued: August 14, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board