

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

_____)	
K.P., Appellant)	
)	
and)	Docket No. 17-1396
)	Issued: May 4, 2018
DEPARTMENT OF THE ARMY, FINANCE & ACCOUNTING DIVISION, Fort Huachuca, AZ,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On June 12, 2017 appellant filed a timely appeal from an April 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹

By decision dated March 10, 2017, OWCP found that, as appellant knowingly failed to report work activity from November 12, 1999 to March 16, 2006 and December 31, 2006 to February 10, 2014, she forfeited FECA compensation for those periods. Also on March 10, 2017, OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$183,933.85, the total FECA compensation she had received for the periods of forfeiture. Appellant was found at fault. OWCP advised appellant of the steps to be taken if she disagreed with the preliminary determination and provided her an overpayment action request form and overpayment recovery questionnaire.

Appellant submitted an overpayment action request, signed on March 28, 2017, received by OWCP on April 6, 2017, in which she indicated that she disagreed with the overpayment. She

¹ OWCP accepted that appellant, then a 38-year-old voucher examiner, sustained employment-related precipitation of major depression. Appellant missed intermittent periods from May 18, 1988 to April 7, 1989, and was placed on the periodic roll in July 1989. She did not return to work. Appellant's name was changed in 1990.

requested a pre-recoupment hearing with OWCP's Branch of Hearings and Review. On April 6, 2017 OWCP received a completed overpayment recovery questionnaire (Form OWCP-20), signed by appellant on March 28, 2017. In a separate appeal form dated March 28, 2017, received by OWCP on April 3, 2017 she requested an oral hearing with the Branch of Hearings and Review regarding the forfeiture decision.

On April 18, 2017 OWCP finalized the overpayment determination. It found that, because appellant knowingly failed to report work activity from November 12, 1999 to March 16, 2006 and December 31, 2006 to February 10, 2014, she forfeited FECA compensation for those periods.

The Board has duly considered the matter and finds that the case is not in posture for decision.

Regarding appellant's request for a pre-recoupment hearing, OWCP received the March 28, 2017 request on April 6, 2017, within 30 days of the March 10, 2017 preliminary notice of overpayment. Its regulations clearly specify that the hearing request must be sent within 30 days of the date of the decision for which a hearing is sought.² The Board therefore finds that as appellant filed a timely request for a pre-recoupment hearing, within 30 days of the March 10, 2017 preliminary notice of overpayment, appellant is entitled to a pre-recoupment hearing. OWCP however finalized the overpayment decision on April 18, 2017 without granting appellant's request for a pre-recoupment hearing.

The Board, therefore, finds that OWCP issued a final decision denying waiver of recovery of the overpayment of compensation without providing appellant due process.³ Because appellant timely requested a pre-recoupment hearing, the case will be remanded to OWCP to respond to her request.

² 20 C.F.R. § 10.616(a); *L.W.*, Docket No. 14-2055 (issued March 17, 2015).

³ *See J.M.*, Docket No. 14-0280 (issued May 5, 2014); *see generally James B. Moses*, 52 ECAB 465 (2001).

IT IS HEREBY ORDERED THAT the April 18, 2017 final overpayment decision is set aside and the case is remanded to OWCP for proceedings consistent with this order of the Board.

Issued: May 4, 2018
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