

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

_____)	
B.W., Appellant)	
)	
and)	Docket No. 18-1004
)	Issued: October 24, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Cincinnati, OH, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 17, 2018 appellant, through counsel, filed a timely appeal from a March 23, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of his case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The record also contains an April 4, 2018 merit decision concerning a \$14,896.43 overpayment of compensation. However, appellant has not appealed that decision to the Board.

ISSUE

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

FACTUAL HISTORY

On October 13, 2003 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an employment injury due to walking on concrete surfaces and going up and down stairs. OWCP accepted her claim for permanent aggravation of bilateral knee osteoarthritis.⁴

Appellant stopped work on October 15, 2003 and later returned to limited-duty work without wage loss. She again stopped on September 24, 2010 and began receiving disability compensation on the daily rolls effective September 29, 2010.⁵

On August 25, 2017 OWCP received notification from the Social Security Administration (SSA) that appellant had been in receipt of SSA benefits since November 1, 2016.

In a September 29, 2017 letter, OWCP advised appellant of its preliminary determination that she received a \$14,896.43 overpayment of compensation for the period November 1, 2016 to September 17, 2017 because she received dual benefits from OWCP and SSA during this period. It also made a preliminary determination that she was at fault in the creation of the overpayment because she knew or should have known that she could not accept such dual benefits. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. It informed her that she could submit additional evidence in writing or at prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the preliminary overpayment determination. OWCP requested that appellant complete and return an enclosed financial information questionnaire (Form OWCP-20) within 30 days even if she was not requesting waiver of the overpayment.

On November 27, 2017 OWCP received an overpayment action request form, dated November 17, 2017, in which appellant requested a prerecoupment hearing.⁶

By decision dated March 23, 2018, OWCP denied appellant's request for a prerecoupment hearing as untimely filed. It found that, because her request was not filed within 30 days of the September 29, 2017 preliminary overpayment determination, appellant was not entitled to a prerecoupment hearing as a matter of right.

⁴ OWCP initially accepted appellant's claim in 2004 for temporary aggravation of preexisting bilateral degenerative joint disease of the knees (ceasing on October 14, 2003), but it later expanded the accepted conditions in 2013.

⁵ Appellant began receiving disability compensation on the periodic rolls beginning November 21, 2010.

⁶ On November 27, 2017 OWCP also received a financial information questionnaire which appellant completed on November 17, 2017.

By decision dated April 4, 2018, OWCP determined that appellant received a \$14,896.43 overpayment and that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.⁷

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁸ The date of the request is determined by the postmark or other carrier's date marking.⁹ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.¹⁰ The only right to a review of a final overpayment decision is with the Board.¹¹ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.¹²

ANALYSIS

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

OWCP issued a preliminary overpayment determination on September 29, 2017. It advised appellant that she had 30 days to request a prerecoupment hearing. On November 27, 2017 OWCP received an overpayment action request form, dated November 17, 2017, in which she requested a prerecoupment hearing. The timeliness of a request for a prerecoupment hearing is determined by the postmark date or other carrier's marking showing when the request was sent to OWCP.¹³ The record does not contain an envelope, other carrier's marking, or evidence relating to electronic transmission. However, the Board notes that, even if the November 17, 2017 date on appellant's actual request for a prerecoupment hearing is used as the date of filing, her request for a prerecoupment hearing would be untimely filed, *i.e.*, filed more than 30 days after the September 29, 2017 preliminary overpayment determination. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions, which was issued in this case

⁷ OWCP found that the financial information submitted by appellant showed that she was capable of paying the entire balance of the overpayment in full.

⁸ 20 C.F.R. § 10.432.

⁹ *Id.* at §§ 10.439, 10.616(a); *see also* C.R., Docket No. 15-0525 (issued July 20, 2015).

¹⁰ *Id.*; *see also* Willie C. Howard, 55 ECAB 564 (2004).

¹¹ 20 C.F.R. § 10.440(b).

¹² *Id.*

¹³ *See* C.W., Docket No. 15-0554 (issued May 27, 2015); 20 C.F.R. §§ 10.439, 10.616(a).

on April 4, 2018.¹⁴ Therefore, OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.¹⁵

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 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

¹⁴ See *supra* note 12.

¹⁵ See *E.V.*, Docket No. 17-1328 (issued December 11, 2017); see also *R.U.*, Docket No. 16-0027 (issued March 24, 2017).