

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

A.B., Appellant)	
)	
and)	Docket No. 18-1172
)	Issued: January 15, 2019
)	
U.S. POSTAL SERVICE, RANDOLPH POST OFFICE, Charlotte, NC, Employer)	
)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 16, 2018 appellant filed a timely appeal from a November 22, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from November 22, 2017, the date of OWCP's last decision was May 21, 2018. Since using May 22, 2018, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 16, 2018, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On March 26, 2002 appellant, then a 21-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she was bit on the right hand by a dog while in the performance of duty. On May 23, 2012 OWCP accepted her claim for open wound of the finger, right hand. On November 13, 2012 it expanded acceptance of appellant's claim to include post-traumatic stress disorder and major depressive disorder. OWCP paid her wage-loss compensation benefits on the periodic rolls as of November 14, 2012.

By decision dated September 5, 2017, OWCP determined that appellant had forfeited her entitlement to compensation beginning January 3, 2017 as, on January 3, 2017, she had pled guilty to 18 U.S.C. § 1920 False Statements to Obtain Federal Employees' Compensation.³ OWCP indicated that, as a result of her conviction, and in accordance with 5 U.S.C. § 8148(a) and 20 C.F.R. § 10.17, appellant was not entitled to receive further benefits under FECA. It noted that it would pay for any authorized medical treatment she received prior to the date of the conviction, but no further medical treatment would be paid beyond that date. Compensation benefits, including schedule award benefits, were terminated effective January 3, 2017, the date of appellant's conviction.

On September 5, 2017 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$21,381.29 for the period January 3 through August 19, 2017 because she continued to receive compensation for this period after she pled guilty under 18 U.S.C. § 1920. It also made a preliminary determination that appellant was at fault in the creation of the overpayment because she accepted a payment she knew or reasonably should have known was incorrect, thereby precluding waiver of recovery of the overpayment. OWCP advised appellant that she could submit evidence or arguments contesting the fact of overpayment, amount of overpayment, or the finding of fault, and if OWCP then finds her without fault, waiver of recovery of the overpayment may be considered. It informed her that she could, within 30 days of the date of the preliminary overpayment determination, request a telephone conference with the district office, request that the district office issue a final decision based on the written evidence of record, or request a prerecoupment hearing. OWCP provided an overpayment recovery questionnaire (Form OWCP-20) for her completion and requested that she respond with supporting financial documentation within 30 days. No response was received.

By decision dated October 6, 2017, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$21,381.29 based on her

³ The record contains an order signed August 18, 2017 by a judge for the U.S. District Court for the Northern District of Texas, Dallas Division accepting appellant's guilty plea under 18 U.S.C. § 1920 to one count of False Statements to Obtain Federal Employees' Compensation for the 15 months preceding September 12, 2014. She was sentenced to 12 months in prison, restitution in the amount of \$41,395.72, and a special assessment fee of \$100.00.

forfeiture of compensation under 18 U.S.C. § 1920, and that appellant was at fault in the creation of the overpayment.

On October 27, 2017 OWCP received an overpayment action request form, dated October 11, 2017 and postmarked October 13, 2017, in which appellant requested a prerecoupment hearing.

By decision dated November 22, 2017, 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 5, 2017 preliminary overpayment determination, she was not entitled to a prerecoupment hearing as a matter of right.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁴ The date of the request is determined by the postmark or other carrier's date marking.⁵ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁶ The only right to a review of a final overpayment decision is with the Board.⁷ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁸

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 5, 2017. It advised appellant that she had 30 days from that date to request a prerecoupment hearing. On October 27, 2017 OWCP received an overpayment action request form, dated October 11, 2017 and postmarked October 13, 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.⁹ As appellant's request for a prerecoupment hearing was postmarked on October 13, 2017, more than 30 days after the September 5, 2017 preliminary overpayment determination, it was untimely filed. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions, which

⁴ 20 C.F.R. § 10.432.

⁵ *Id.* at §§ 10.439, 10.616(a); *see also* *B.W.*, Docket No. 18-1004 (issued October 24, 2018); *C.R.*, Docket No. 15-0525 (issued July 20, 2015).

⁶ *Id.*

⁷ 20 C.F.R. § 10.440(b).

⁸ *Id.*

⁹ *B.W.*, *supra* note 5.

was issued in this case on October 6, 2017.¹⁰ Therefore, OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.¹¹

On appeal, appellant contends that the 30-day time limitation for prerecoupment hearings should not run against her because she was incompetent. However, there is no provision in FECA or its regulations which provides an exception for incompetence to toll the 30-day period to request a prerecoupment hearing.¹²

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 November 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2019
Washington, DC

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

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

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

¹⁰ 20 C.F.R. § 10.440(b).

¹¹ See *B.W.*, *supra* note 5; *E.V.*, Docket No. 17-1328 (issued December 11, 2017); see also *R.U.*, Docket No. 16-0027 (issued March 24, 2017).

¹² 20 C.F.R. § 10.432.