

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

_____)
D.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Las Vegas, NV, Employer)
_____)

Docket No. 19-1885
Issued: April 24, 2020

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2019 appellant filed a timely appeal from a July 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its July 10, 2019 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

This case had previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 13, 1995 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced stress and depression as a result of factors of her federal employment. She stopped work on March 9, 1995 and did not return. On March 5, 1996 OWCP accepted appellant's claim for depression and mood disorder and paid her wage-loss compensation benefits on the periodic rolls.

In completed EN1032 forms dated from February 22, 2012 to March 1, 2019, appellant disclosed her receipt of monthly Social Security Administration (SSA) benefits as part of an annuity for federal service.

On May 9, 2019 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$55,810.43 because the SSA/Federal Employees Retirement System (FERS) offset was not applied to payments for the period May 1, 2013 through April 27, 2019. It determined that she was without fault in the creation of the overpayment, because she was not aware, nor could she reasonably have been expected to know, that it had paid her compensation incorrectly. OWCP advised appellant that, if she disagreed with the fact or the amount of the overpayment, she had a right to submit new evidence in support of her claim. It further advised her of her rights, which included a right to request a prerecoupment hearing before a representative of the Branch of Hearings and Review. OWCP provided an overpayment recovery questionnaire (Form OWCP-20) for appellant's completion and requested that she respond with supporting financial documentation within 30 days.

On June 21, 2019 OWCP received an overpayment action request form, dated June 15, 2019, in which appellant requested a prerecoupment hearing. The postmark was illegible.

By decision dated July 10, 2019, 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 May 9, 2019 preliminary overpayment determination, she was not entitled to a prerecoupment hearing as a matter of right.

³ Docket No. 09-0968 (issued December 28, 2009). The Board affirmed, in part, a January 12, 2009 OWCP decision finding a \$15,360.15 overpayment of compensation for the period July 10, 2004 through August 2, 2008 as it incorrectly paid appellant wage-loss compensation at the augmented compensation rate. The Board affirmed OWCP's finding that she was without fault in the creation of the overpayment, and its denial of waiver of recovery, but remanded the case for additional development on the issue of the rate of recovery of the overpayment. The Board notes that findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA. *J.T.*, Docket No. 18-1757 (issued April 19, 2019); *S.S.*, Docket No. 17-1106 (issued June 5, 2018); *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

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 hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁷

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 May 9, 2019. It advised appellant that she had 30 days from that date to request a prerecoupment hearing. On June 21, 2019 OWCP received an overpayment action request form, dated June 15, 2019, with no legible postmark, 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.⁸ As appellant's request for a prerecoupment hearing was dated June 15, 2019, more than 30 days after the May 9, 2019 preliminary overpayment determination, it was untimely filed. Therefore, OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.⁹

On appeal appellant contends that the 30-day time limitation for prerecoupment hearings should not run against her because she was hospitalized from May 25 to June 6, 2019. However, there is no provision in FECA or its regulations which provides an exception for hospitalization to toll the 30-day period to request a prerecoupment hearing.¹⁰

CONCLUSION

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

⁴ 20 C.F.R. § 10.432.

⁵ *Id.* at §§ 10.439, 10.616(a); *A.B.*, Docket No. 18-1172 (issued January 15, 2019); *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 *Id.*

⁸ *A.B.*, *supra* note 5.

⁹ *See A.B.*, *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).

¹⁰ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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