

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

_____)	
S.G., Appellant)	
)	
and)	Docket No. 22-0476
)	Issued: August 11, 2022
U.S. POSTAL SERVICE, COLONIAL PARK)	
POST OFFICE, New York, NY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 11, 2022 appellant, through counsel, filed a timely appeal from a December 16, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated August 5, 2011, to the filing of this appeal, 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 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.*

ISSUE

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

FACTUAL HISTORY

On June 12, 2009 appellant, then a 37-year-old casual maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2009 she sustained injuries to her neck, back, and arm when she slipped and fell on a wet floor while in the performance of duty. OWCP initially accepted the claim for contusions of the back, neck, right shoulder, and right wrist, later expanding the acceptance of her claim to include internal derangement of the right forearm, right mononeuritis multiplex, right shoulder and forearm acromioclavicular sprain, chronic pain syndrome, and reflex sympathetic dystrophy of the right upper limb. Appellant stopped work on June 10, 2009 and did not return to work at the employing establishment. OWCP paid her wage-loss compensation on the supplemental rolls as of July 27, 2009 and on the periodic rolls as of October 25, 2009.

On September 16, 2021 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of wage-loss compensation in the amount of \$1,671.21 because she returned to work with a private employer on August 10, 2021 but continued to receive wage-loss compensation through September 11, 2021. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses.

Additionally, it provided an overpayment action request form and advised appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or request a prerecoupment hearing.

By overpayment action request form dated November 3, 2021, appellant requested a prerecoupment hearing.³ She disagreed with the amount of overpayment and requested waiver of recovery.

By decision dated December 16, 2021, OWCP denied appellant's request for a prerecoupment hearing as untimely filed. It found that, because her request was not postmarked within 30 days of the September 16, 2021 preliminary overpayment determination, she was not entitled to a prerecoupment hearing as a matter of right.

³ The case record does not contain an accompanying envelope showing a postmark or other carrier's date of marking for this document.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁴ Failure to request a prerecoupment hearing within 30 days constitutes a waiver of the right to a hearing.⁵ In computing a time period, the date of the event from which the designated period of time begins to run shall not be included, while the last day of the period so computed shall be included unless it is a Saturday, Sunday, or a federal holiday.⁶ The date of the request is determined by the postmark or other carrier's date marking.⁷ OWCP has administratively decided that the test used in 20 C.F.R. § 10.616(a) for determining the timeliness of hearing requests should apply to requests for prerecoupment hearings.⁸ Accordingly, timeliness is determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used.⁹

ANALYSIS

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

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, or in the absence of such a marking, the date of the letter itself.¹⁰ OWCP issued its preliminary overpayment determination on Thursday, September 16, 2021. As appellant's request for a prerecoupment hearing was dated Wednesday, November 3, 2021, it was untimely filed.¹¹ The Board thus finds that OWCP properly denied her request for a prerecoupment hearing.¹²

⁴ 20 C.F.R. § 10.432; *see E.G.*, Docket No. 19-0176 (issued February 23, 2021); *S.O.*, Docket No. 20-0753 (issued October 28, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

⁵ *Id.*

⁶ *See B.W.*, Docket No. 16-1860 (issued May 4, 2017); *M.R.*, Docket No. 11-970 (issued August 12, 2011); *Donna A. Christley*, 41 ECAB 90 (1989). *See also John B. Montoya*, 43 ECAB 1148 (1992).

⁷ 20 C.F.R. §§ 10.439, 10.616(a); *see 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).

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.2a&f (September 2020).

⁹ *See J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001), citing *William J. Kapfhammer*, 42 ECAB 271 (1990); *see also Douglas McLean*, 42 ECAB 759 (1991).

¹⁰ *Id.*

¹¹ *Supra* note 7.

¹² *See E.G.*, *supra* note 4; *E.V.*, Docket No. 17-1328 (issued December 11, 2017). *See also R.U.*, Docket No. 16-0027 (issued March 24, 2017); *Ronald E. Morris*, Docket No. 05-1553 (issued November 23, 2005).

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 December 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board