

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

V.M., Appellant)	
)	
and)	Docket No. 21-0914
)	Issued: February 16, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
San Diego, CA, Employer)	
)	

Appearances:
Laura C. Marquez, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 27, 2021 appellant, through his representative filed a timely appeal from an April 29, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 11, 2020, 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 August 8, 1989 appellant, then a 38-year-old letter sorting machine operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his back while lifting and twisting with a tub of mail while in the performance of duty. OWCP accepted the claim for lumbosacral strain with radiculopathy. Appellant subsequently accepted a modified distribution clerk position on November 1, 1996. He stopped work on March 18, 2008.³ On April 30, 2008 OWCP found that the employing establishment had only four hours of work available within appellant's medical restrictions. On January 20, 2010 it determined that the employing establishment could no longer provide him with light-duty work. OWCP paid appellant wage-loss compensation.⁴

On March 11, 2021 OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$63,119.26 for the period January 1, 2017 through February 27, 2021 because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It determined that he 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 him that, within 30 days of the date of the letter, he could request a final decision based on the written record or request a prerecoupment hearing.

By overpayment action request form, dated April 11, 2021, appellant requested a prerecoupment hearing.⁵ He disagreed with the fact and amount of the overpayment and requested waiver of recovery. Appellant contended that he was receiving SSA benefits for disability due to a mental health diagnosis and not due to his accepted employment-related back condition.

³ On April 29, 2008 appellant filed a notice of recurrence (Form CA-2a) alleging that he continued to experience lower back pain due to his accepted August 8, 1989 employment injury. On April 30, 2008 he completed a claim for compensation (Form CA-7) and indicated that his retirement was under the Federal Employees' Retirement System (FERS).

⁴ By decision dated October 15, 2010, OWCP reduced appellant's compensation due to his failure to cooperate with vocational rehabilitation counseling based on the constructed position of general office/administrative clerk. By decision dated March 11, 2020, it suspended his wage-loss compensation effective March 12, 2020 as he failed to report his earnings as requested. On April 6, 2020 OWCP reinstated his wage-loss compensation, retroactive to March 12, 2020.

⁵ The case record does not contain an accompanying envelope showing a postmark or other carrier's date of marking.

By decision dated April 29, 2021, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing as untimely filed. It found that, because his request was not postmarked within 30 days of the March 11, 2021 preliminary overpayment determination, he 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.⁶ Failure to request a prerecoupment hearing within 30 days constitutes a waiver of the right to a hearing.⁷ 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.⁸ The date of the request is determined by the postmark or other carrier's date marking.⁹ 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.¹⁰ Accordingly, timeliness is determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used.¹¹

ANALYSIS

The Board finds that OWCP improperly 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.¹² OWCP issued its preliminary overpayment determination on Thursday, March 11, 2021. The 30th day from March 11, 2021 was April 10, 2021. As this fell on a Saturday, appellant had until Monday, April 12, 2021 to request a prerecoupment hearing.¹³ As appellant's request for a prerecoupment

⁶ 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).

⁷ *Id.*

⁸ *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).

⁹ *Id.* at §§ 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).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.0400.2(f) (September 2020).

¹¹ *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).

¹² *Supra* note 7.

¹³ *Supra* note 8.

hearing was dated Sunday, April 11, 2021, it was timely filed.¹⁴ The Board thus finds that OWCP improperly denied appellant's request for a prerecoupment hearing.¹⁵

On remand, OWCP shall conduct a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review, to be followed by any necessary further development and a *de novo* decision.¹⁶

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 16, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Supra* note 9.

¹⁵ *See E.G., supra* note 6; *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).

¹⁶ *Order Remanding Case, N.G, widow of T.G.*, Docket No. 19-1482 (issued September 17, 2020); *C.R.*, Docket No. 15-0525 (issued July 20, 2015).