

² The Board notes that, following the April 9, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

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

FACTUAL HISTORY

On December 29, 2014 appellant, then a 31-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced pain in her right ear when two aircraft transmitted at the same time causing a high-pitched noise through her headset while in the performance of duty. She stopped work on January 30, 2014 and did not return. OWCP accepted the claim for tinnitus of the right ear.³ It paid appellant wage-loss compensation on the supplemental rolls as of March 8, 2015, and on the periodic rolls as of December 11, 2016.

Appellant completed annual Forms EN-1032 through June 4, 2020, noting that she had not returned to work and had a minor child as an eligible dependent. In a June 8, 2020 letter, she notified OWCP that her minor child was no longer her direct dependent, effective March 15, 2020.

In a preliminary overpayment determination dated June 25, 2020, OWCP advised appellant that she received a \$1,486.80 overpayment of compensation for the period March 15 through May 23, 2020, as she had received wage-loss compensation at the augmented rate when she had no eligible dependents. It determined that she was without fault in the creation of the overpayment as she promptly provided a timely notification of her change in dependent status. OWCP advised appellant that she could submit evidence challenging the fact or amount of the overpayment. It requested that she complete an overpayment recovery questionnaire (Form OWCP-20) to determine whether waiver should be granted, and if not, a reasonable repayment schedule and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoupment hearing.

In a letter dated July 23, 2020 and received by OWCP on the same date, appellant requested an extension of time to submit her prerecoupment hearing request and completed Form OWCP-20. She asserted that she did not receive the Form OWCP-20 until July 15, 2020 due to an ongoing delay in postal mail delivery.

In a July 27, 2020 memorandum of telephone call (Form CA-110), an OWCP claims examiner noted that appellant had called to confirm OWCP's receipt of her July 23, 2020 request for an extension of time. She advised that she did not have the authority to grant appellant an extension of time, but that her request would be forwarded to a senior claims examiner.

³ Under OWCP File No. xxxxxx355, appellant filed an occupational disease claim (Form CA-2) on March 13, 2015 for post-traumatic stress disorder (PTSD) and major depression. On October 6, 2016 OWCP accepted the claim for PTSD and recurrence of major depressive disorder. It administratively combined the present claim, OWCP File No. xxxxxx020, and OWCP File No. xxxxxx355, with the latter designated as the master file.

In a July 28, 2020 Form CA-110, another OWCP claims examiner noted that appellant had again telephoned to confirm OWCP's receipt of her July 23, 2020 request for an extension of time. The claims examiner advised appellant that he would refer her July 23, 2020 inquiry to the senior claims examiner assigned to the overpayment case.

On August 7, 2020 OWCP received appellant's completed overpayment action request form, dated August 1, 2020, in which she requested a prerecoupment hearing. Appellant also requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment and she would suffer severe financial hardship in attempting to repay the debt. She also submitted a completed Form OWCP-20 and supporting financial documentation.

By decision dated April 9, 2021, 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 June 25, 2020 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 constitutes 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 improperly denied appellant's request for a prerecoupment hearing as untimely filed.

OWCP issued a preliminary overpayment determination on June 25, 2020. It advised appellant that she had 30 days from that date to request a prerecoupment hearing.

In a July 23, 2020 letter, received by OWCP on that date, appellant requested an extension of time to submit her Form OWCP-20 and prerecoupment hearing request. She advised OWCP that she did not receive the Form OWCP-20 until July 15, 2020 due to an ongoing delay in postal

⁴ 20 C.F.R. § 10.432; *see 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.* 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).

⁶ *Id.*; *F.P.*, Docket No. 20-1646 (issued August 3, 2021).

⁷ 20 C.F.R. § 10.440(b).

⁸ 5 U.S.C. § 8124(b); *see G.L.*, Docket No. 19-0297 (issued October 23, 2019).

mail delivery. Appellant followed up by telephone on July 27 and 28, 2020 to confirm receipt of her request for an extension of time. OWCP, each time, advised that her request would be forwarded to a senior claims examiner. A senior claims examiner, however, never responded to appellant's request for an extension of time. Under the circumstances of this case, the Board finds that she filed her request for a prerecoupment hearing on July 23, 2020 the date of her letter requesting an extension.⁹ Appellant's request for a prerecoupment hearing was, therefore, timely filed within 30 days of the June 25, 2020 preliminary overpayment determination.¹⁰

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 9, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 14, 2023
Washington, DC

Alec J. Koromilas, 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

⁹ See *C.R.*, *supra* note 5.

¹⁰ See generally *M.T.*, Docket No. 22-0437 (issued July 29, 2022); *V.M.*, Docket No. 21-0914 (issued February 16, 2022).