

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

)	
D.B., Appellant)	
)	
and)	Docket No. 23-0349
)	Issued: July 28, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 10, 2023 appellant filed a timely appeal from a January 4, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's request for a prerecoupment hearing. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 12, 2017 appellant, then a 62-year-old mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2017 he sustained injuries to his neck and lower back when pushing a truck while in the performance of duty. He stopped work on the date of

¹ 5 U.S.C. § 8101 *et seq.*

injury. OWCP accepted the claim for strain of muscle, fascia, and tendons of the neck and strain of muscle fascia and tendons of the lower back. It paid appellant wage-loss compensation on the supplemental rolls as of October 27, 2017 and on the periodic rolls as of December 9, 2018.

On June 1, 2021 appellant made a retroactive election to receive Office of Personnel Management (OPM) retirement benefits, effective March 10, 2021 in lieu of FECA compensation.

On August 8, 2022 OPM reported that appellant received retirement benefits beginning April 1, 2021.

On August 22, 2022 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of wage-loss compensation in the amount of \$10,998.46 for the period April 1 through June 19, 2021. It explained that the overpayment was the result of his receipt of FECA compensation benefits through June 19, 2021 after having received OPM retirement benefits effective April 1, 2021. OWCP determined that appellant was without fault in the creation of the overpayment. It provided a calculation of the overpayment and requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) and 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, OWCP provided an overpayment action request form and advised appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or request a prerecoupment hearing. It further advised him that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. No information was received.

By decision dated September 26, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$10,998.46 for the period April 1 through June 19, 2021 because he received FECA compensation benefits and OPM benefits during the same period. It also found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not completed and returned OWCP's Form OWCP-20.

On September 29, 2022 OWCP received an overpayment action request form dated September 22, 2022, wherein appellant requested a prerecoupment hearing. Appellant disagreed that the overpayment occurred, disagreed with the amount of the overpayment, and requested waiver of recovery of the overpayment.² A September 22, 2022 completed Form OWCP-20 with supporting documentation was also received.

By decision dated December 14, 2022, OWCP vacated its September 26, 2022 overpayment decision and suspended the debt pending a review of the prerecoupment hearing request before OWCP's Branch of Hearings and Review. It noted that, if appellant had not already done so, he should provide supporting documents to the Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support the income and expenses listed on the form he submitted.

²The case record does not contain an accompanying envelope showing a postmark or other carrier's date of marking for this document.

By decision dated January 4, 2023, OWCP denied appellant's request for a prerecoumment hearing as untimely filed. It found that, because his request was not dated within 30 days of the August 22, 2022 preliminary overpayment determination, he was not entitled to a prerecoumment hearing as a matter of right.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a prerecoumment hearing with respect to an overpayment.³ Failure to request a prerecoumment hearing within 30 days constitutes a waiver of the right to a hearing.⁴ 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.⁵ The date of the request is determined by the postmark or other carrier's date marking.⁶ 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 prerecoumment hearings.⁷ Accordingly, timeliness is determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used.⁸

ANALYSIS

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

OWCP issued a preliminary overpayment determination on August 22, 2022. It advised appellant that he had 30 days to request a prerecoumment hearing. On September 29, 2022 OWCP received his overpayment action request form dated September 22, 2022, in which he requested a prerecoumment hearing. The timeliness of a request for a prerecoumment 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.⁹ However, the record does not contain a postmarked envelope or other carrier's marking. As appellant's request for a prerecoumment

³ 20 C.F.R. § 10.432; *see S.G.*, Docket No. 22-0476 (issued August 11, 2022); *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).

⁴ *Id.*

⁵ *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).

⁶ 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).

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.2a&f (September 2020).

⁸ *S.G.*, *supra* note 3; *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).

⁹ *Id.*; *supra* note 7.

hearing was dated September 22, 2022, more than 30 days after the August 22, 2022 preliminary overpayment determination, it was untimely filed.¹⁰ The Board thus finds that OWCP properly denied his request for a prerecoupment hearing as untimely filed.¹¹

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 January 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁰ *C.L.*, Docket No. 22-0349 (issued August 30, 2022); *S.G.*, *supra* note 3; *B.W.*, *supra* note 6; *see also supra* note 8.

¹¹ *Id.*