

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.³

ISSUE

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

FACTUAL HISTORY

On April 4, 2019 appellant, then a 65-year-old vocational rehabilitation specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2019 she experienced a chemical burn of her throat after her office was mopped with a cleaning solution while in the performance of duty. OWCP accepted the claim for laryngeal spasm, burn of the larynx and trachea, localized swelling, mass and lump of the neck, and acute bronchospasm. It paid appellant wage-loss compensation on the supplemental rolls, effective April 30, 2019, and on the periodic rolls, effective August 18, 2019.

In a preliminary overpayment determination dated August 4, 2022, OWCP notified appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$39,688.77 for the period February 1, 2019 through July 16, 2022, because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It determined that she was without fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment schedule, and advised her that she could request a waiver of recovery of the overpayment. It further requested that she 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. Additionally, 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.

On September 2, 2022 OWCP received an overpayment action request form in which appellant requested that OWCP make a decision based on the written evidence. Appellant requested waiver of recovery of the overpayment because she was found to be without fault in the creation of the overpayment.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the November 3, 2022 decision and on appeal, OWCP received additional evidence. 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.*

On a Form OWCP-20 dated August 31, 2022, appellant reported a monthly gross income of \$3,180.00 in SSA benefits and \$1,460.00 of other income, for a total of \$4,670.00 in monthly income. She noted \$4,305.00 in monthly expenses and assets of \$2,090.00.

Appellant, through counsel, submitted a September 2, 2022 response to the preliminary overpayment determination.

By decision dated September 12, 2022, OWCP finalized its preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$39,688.77 for the period February 1, 2019 through July 16, 2022 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that waiver was denied because there was no evidence to substantiate that adjustment or recovery would defeat the purpose of FECA, or be against equity and good conscience. It required recovery of the overpayment by deducting \$725.67 every 28 days from appellant's continuing compensation payments.

On October 14, 2022 OWCP received an overpayment action request form, dated September 29, 2022, in which appellant requested a precoupment hearing. On the form, appellant indicated that she disagreed that the overpayment occurred, requested waiver of recovery of the overpayment, and asserted that her retirement income was lost in the February 2021 Texas freeze, and that she would experience financial hardship. She submitted a federal tax return from 2021. Appellant also submitted a Form OWCP-20 dated August 31, 2022 and a September 2, 2022 response to the preliminary overpayment determination, previously of record.

By decision dated November 3, 2022, OWCP denied appellant's request for a precoupment hearing as untimely filed. It found that her request was not filed within 30 days of the August 4, 2022 preliminary overpayment determination.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a precoupment 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 precoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁶ The only right to a review of a final overpayment

⁴ 20 C.F.R. § 10.432. *See 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.*

decision is with the Board.⁷ The hearing provisions of section 8124(b) of FECA (5 U.S.C. § 8124(b)) do not apply to final overpayment decisions.⁸

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 August 4, 2022. It advised appellant that she had 30 days from that date to request a prerecoupment hearing. The record indicates that OWCP properly mailed its preliminary determination to her last known address of record. On September 2, 2022 appellant requested that OWCP make a decision based on the written evidence. She did not request a prerecoupment hearing within 30 days of August 4, 2022.

On October 14, 2022 OWCP received an overpayment action request form, dated September 29, 2022, with no postmark, in which appellant 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.⁹ As appellant's request for a prerecoupment hearing was dated September 29, 2022, more than 30 days after the August 4, 2022 preliminary overpayment determination, it was untimely filed. Therefore, OWCP properly denied her request for a prerecoupment hearing as untimely filed.¹⁰

CONCLUSION

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

⁷ 20 C.F.R. § 10.440(b). *See R.S.*, Docket No. 20-0624 (issued February 9, 2022).

⁸ *Id.* at § 10.440(b). *See G.L.*, Docket No. 19-0297 (issued October 23, 2019).

⁹ *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

¹⁰ *See F.P.*, Docket No. 20-1646 (issued August 3, 2021).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2023
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