

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

F.J., Appellant)	
)	
and)	Docket No. 23-0771
)	Issued: October 3, 2023
U.S. POSTAL SERVICE, OKLAHOMA CITY)	
POST OFFICE, Oklahoma City, OK, Employer)	
)	

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On May 4, 2023 appellant filed a timely appeal from an April 18, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0771.

On January 4, 2021 appellant, then a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries to his cervical spine, both shoulders, elbows, and feet while in the performance of duty. He noted that he first became aware of his conditions on April 15, 2019 and realized their relationship to his federal employment on September 30, 2020. On January 21, 2022 OWCP accepted appellant's claim for right shoulder adhesive capsulitis. On June 27, 2022 it expanded the acceptance of his claim to include incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic; unspecified internal derangement of right and left knees; chondromalacia of right and left hips; and aggravation of intervertebral disc degeneration, lumbar region. OWCP paid appellant wage-loss compensation on the supplemental rolls for the period October 4, 2020 through July 16, 2022 and on the periodic rolls from July 17 through December 31, 2022.

On January 26, 2023 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of wage-loss compensation in the amount of \$78,541.14 from October 4, 2020 through December 31, 2022 because he concurrently received

VA service-connected disability benefits and FECA compensation benefits. It further advised him of its preliminary determination that he was at fault in the creation of the overpayment. OWCP provided an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) for appellant's completion. Additionally, it notified him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precoupment hearing.

In an overpayment action request form dated February 14, 2023, appellant requested waiver of recovery of the overpayment, provided a completed Form OWCP-20, and requested a precoupment hearing before a representative of OWCP's Branch of Hearings and Review.

Subsequently, in a letter dated March 30, 2023, appellant noted that he had not received a response to his February 14, 2023 hearing request, and again requested a precoupment hearing.

By decision dated April 18, 2023, OWCP denied appellant's March 30, 2023 request for a precoupment hearing as untimely filed. It found that, because his request was not made within 30 days of the January 26, 2023 preliminary overpayment determination, he was not entitled to a precoupment hearing as a matter of right.

The Board, having duly considered this matter, finds that OWCP improperly denied appellant's request for a precoupment hearing.

OWCP's regulations provide that a claimant may request a precoupment hearing with respect to an overpayment.¹ The date of the request is determined by the postmark or other carrier's date marking.² Failure to request the precoupment hearing within 30 days constitutes a waiver of the right to a hearing.³

Appellant had 30 days from OWCP's January 26, 2023 preliminary overpayment determination to request a final decision based on a review of the written evidence or a precoupment hearing. On his February 14, 2023 overpayment action request form, appellant requested a precoupment hearing, as he timely requested a precoupment hearing on February 14, 2023 within 30 days following the issuance of OWCP's January 26, 2023 preliminary determination, the case must be remanded to OWCP for a precoupment hearing, to be followed by a *de novo* decision as to whether he received an overpayment of compensation.

¹ 20 C.F.R. § 10.432; *see A.A.*, Docket No. 21-0835 (issued February 14, 2023); *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).

² *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).

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

IT IS HEREBY ORDERED THAT the April 18, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 3, 2023
Washington, DC

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

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

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