

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 October 3, 2002, appellant, then a 47-year-old telecommunications supervisor, filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2002 he injured his back and right leg/foot when his vehicle dropped into a drainage ditch when turning around while in the performance of duty. OWCP accepted the claim for intervertebral disc disorders with radiculopathy, lumbosacral region; chronic pain syndrome; right foot drip; adjustment disorder with depressed mood; bilateral carpal tunnel syndrome; other intervertebral disc degeneration, lumbar region; other intervertebral disc displacement, lumbar region; adhesive capsulitis of right shoulder; adhesive capsulitis of left shoulder; and lesion of ulnar nerves, bilateral. It paid appellant wage-loss compensation on the supplemental rolls from March 6 through June 14, 2003, and on the periodic rolls effective July 13, 2003.

On October 26, 2023, OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$18,609.80 for the period July 1, 2021 through August 12, 2023 because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset. It also made a preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised him that he could request waiver of recovery of the overpayment. Additionally, it provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a prerecoupment hearing.

On November 2, 2023, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment. He also submitted a completed Form OWCP-20 with financial information. A telephonic prerecoupment hearing was held on February 12, 2024.

By decision dated March 14, 2024, an OWCP hearing representative vacated the October 26, 2023 preliminary determination and remanded the case for OWCP to request additional information from SSA with regard to the period for which appellant received benefits to which he was entitled. Following any other development deemed necessary, OWCP was to issue a *de novo* preliminary overpayment determination.

On March 25, 2024, OWCP requested that SSA clarify the period(s) for which appellant received and was entitled to SSA age-related retirement benefits and to provide the applicable SSA rates with and without federal service. It noted that if retirement benefits had been reinstated to also provide the effective date of the reinstatement and whether he had been paid retirement benefits since October 2023.

On April 23, 2024, SSA responded that appellant received SSA age-related retirement benefits beginning July 2021 and provided the applicable SSA age-related retirement benefits rates with and without federal service effective July 2021, December 2021, December 2022, and December 2023.

On June 25, 2024, OWCP issued a new preliminary overpayment determination, finding that he received an overpayment of compensation in the amount of \$18,609.80 for the period July 1, 2021 through August 12, 2023 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. It also made a preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method and advised him that he could request waiver of recovery of the overpayment. Additionally, it provided an overpayment action request form and further 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 prerecoupment hearing.

On August 13, 2024, OWCP received *via* the Employees' Operations and Management Portal (ECOMP), appellant's request for a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. Appellant requested waiver of recovery of the overpayment and submitted a completed Form OWCP-20. No supporting financial documentation was received.

By decision dated September 11, 2024, OWCP's Branch of Hearings and Review denied appellant's prerecoupment hearing request as it was not made within 30 days of the June 25, 2024 preliminary overpayment determination, and was therefore untimely filed.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.³ The date of the request is determined by the postmark or other carrier's date marking, or the date received in ECOMP.⁴ Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.⁵ The only right to a review of a final overpayment decision is with the Board.⁶ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁷

³ 20 C.F.R. at § 10.432.

⁴ *Id.* at §§ 10.439, 10.616(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

⁵ *Id.* at § 10.432; *see also* *D.C.*, Docket No. 21-0913 (issued December 8, 2023); *C.L.*, Docket No. 22-0349 (issued August 20, 2022); *C.R.*, Docket No. 15-0525 (issued July 20, 2015); *Willie C. Howard*, 55 ECAB 564 (2004).

⁶ *Id.* at § 10.440(b).

⁷ *Id.*

ANALYSIS

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

OWCP issued its preliminary overpayment determination on June 25, 2024. It advised appellant that he had 30 days to request a prerecoupment hearing. In an overpayment action request form, dated and received *via* ECOMP on August 13, 2024, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. There is no provision in FECA or its regulations which allows an exception to the 30-day time limitation for requesting a prerecoupment hearing.⁸ Since the August 13, 2024 request for a prerecoupment hearing was made more than 30 days after the June 25, 2024 preliminary overpayment determination, it was untimely.⁹ OWCP thus properly denied appellant's request for a prerecoupment hearing.¹⁰

CONCLUSION

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

⁸ *Supra* note 6; *D.R.*, Docket No. 19-1885 (issued April 24, 2020).

⁹ 20 C.F.R. §§ 10.439, 10.616(a); *see D.C.*, *supra* note 5; *S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

¹⁰ *See E.G.*, Docket No. 19-0176 (issued February 23, 2021); *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).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2025
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