United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 26-0619**
	)	**Issued: October 13, 2026**
U.S. POSTAL SERVICE, SAN ANTONIO POST OFFICE, San Antonio, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 23, 2026 appellant filed a timely appeal from a February 27, 2026 merit decision and a June 12, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.[3]

[1] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his request for oral argument, appellant contended that he was entitled to waiver of the overpayment. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the June 12, 2026 decision, 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*.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation for the period June 17 through July 23, 2025 pursuant to 20 C.F.R. § 10.500(a), based on his refusal of an offer of a temporary limited-duty assignment; (2) whether appellant has met his burden of proof to establish that his refusal of the temporary limited-duty assignment was justified; and (3) whether OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

FACTUAL HISTORY

On March 5, 2021 appellant, then a 45-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 1, 2021 he injured his lower back when clearing a feeder while in the performance of duty.[4] He stopped work on the date of injury, returned to part-time modified-duty work on August 3, 2021, and stopped work again on July 20, 2022. OWCP accepted the claim for sprain of ligaments and intervertebral disc displacement of the thoracic spine. It paid appellant wage-loss compensation on the supplemental rolls commencing April 15, 2021, and on the periodic rolls commencing September 11, 2022.

Appellant received medical treatment for the accepted conditions, including physical therapy; a trial spinal cord stimulator on June 1, 2022; a permanent spinal cord stimulator on July 27, 2022; removal of the spinal cord stimulator on May 2, 2023; epidural steroid injections; and pain medication.

On January 17, 2025 OWCP referred appellant, along with the case record and statement of accepted facts (SOAF), to Dr. Manish Patel, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of his condition and disability.

In a report dated February 10, 2025, Dr. Patel reviewed the medical record and noted appellant's complaints of back pain. He performed a physical examination and observed mild difficulty rising from sitting and supine positions, reduced range of motion of the lumbar spine, mild tenderness to palpation of thoracolumbar paraspinal musculature, and slightly diminished sensation to light touch in the L5 distribution. Dr. Patel diagnosed thoracic ligament sprain and intervertebral disc herniation with radiculopathy. He opined that appellant could not perform his pre-injury duties, but could return to work with restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Patel recommended full-time sedentary-duty work for a period of six months.

On February 28, 2025 the employing establishment offered appellant a limited-duty position as a modified mail processing clerk beginning March 1, 2025. The job offer noted that the position was full-time, with an annual salary of $68,823.00. The duties of the modified assignment were noted as intermittently handling Internal Revenue Service (IRS) mail, checking in and out scanners, verifying placards, firm caller mail sorting and scanning, and manual letter cases. The physical requirements of the position included intermittent sitting for 90 percent of the

[4] OWCP assigned the present claim OWCP File No. xxxxxx820. Appellant previously filed a Form CA-1 for a July 9, 2016 lower back injury, which OWCP denied under OWCP File No. xxxxxx457. OWCP has not administratively combined OWCP File Nos. xxxxxx820 and xxxxxx457. The record reflects that appellant underwent lumbar fusion surgery at L4-S1 on October 10, 2016.

day, intermittent standing and walking up to a total of 2 hours and 40 minutes per day, and intermittent reaching above shoulder height, simple grasping, and fine manipulation for up to 8 hours per day. The job offer noted that it was based on the restrictions provided in Dr. Patel's February 10, 2025 report.

Appellant refused the modified-duty job offer on March 10, 2025. He provided a February 13, 2025 duty status report (Form CA-17), wherein Dr. Andrea Pana, Board-certified in family and sports medicine, opined that appellant was totally disabled from all work. Appellant subsequently submitted a follow-up medical report dated March 25, 2025 by Dr. Pana and medical reports dated January 20 and February 26, 2025 by Dr. Jacob Caylor, Board-certified in anesthesiology and pain medicine, which indicated that appellant was administered epidural steroid injections, nerve blocks, and nerve ablations.

On April 17, 2025 OWCP issued a notice of proposed termination of appellant's wage-loss compensation in accordance with 20 C.F.R. § 10.500(a) based on his refusal of the February 28, 2025 modified-duty assignment. It asserted that he had been provided with a temporary light-duty assignment as a modified mail processing clerk, and that the employing establishment advised that he had declined the offer. OWCP indicated that it had reviewed the modified-duty assignment and determined that it comported with the work restrictions provided by Dr. Patel in his February 10, 2025 report and Form OWCP-5c. It also informed appellant of the provisions of 20 C.F.R. § 10.500(a) and advised him that his entitlement to wage-loss compensation would be "terminated indefinitely" if he did not accept the job offered or provide a written explanation with justification for his refusal within 30 days.

On April 21, 2025 appellant advised that he was instructed by his physician to remain off work until he completed physical therapy. On an April 29, 2025 Form CA-17, Dr. Pana opined that appellant was totally disabled from work. OWCP also received a follow-up medical report by Dr. Pana dated May 19, 2025, medical reports dated May 23 through June 6, 2025 by Dr. Alina Sholar, a Board-certified plastic surgeon, and a functional capacity evaluation dated June 10, 2025.

On June 11, 2025 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of $3,256.33 for the period August 31, 2023 through March 22, 2025 because it failed to properly deduct life insurance premiums from his FECA wage-loss compensation. It determined that he was without fault in the creation of the overpayment. OWCP requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, cancelled checks, pay slips, and other records that support income and expenses. Additionally, it provided an overpayment action request form and notified appellant that, within 30 days, he could request a final decision based on the written evidence, or a prerecoupment hearing.

By decision dated June 17, 2025, OWCP terminated appellant's wage-loss compensation, effective that date, pursuant to 20 C.F.R. § 10.500(a). It noted that he had refused the February 28, 2025 modified-duty position which was within the work restrictions provided by Dr. Patel.

In a Form CA-17 dated June 24, 2025, Dr. Sholar released appellant to work four hours per day with continuous lifting up to two pounds, intermittent lifting up to eight pounds, and standing, walking, pulling, and pushing for up to two hours.

In an overpayment action request form dated June 30, 2025, appellant requested that OWCP make a decision on the written evidence regarding possible waiver of recovery of the overpayment. He submitted a completed Form OWCP-20 and financial documentation.

On July 14, 2025 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with respect to the June 17, 2025 termination decision, which was held on December 10, 2025. He also submitted additional medical evidence.

By decision dated September 4, 2025, OWCP finalized the June 11, 2025 preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount $3,256.33 for the period August 13, 2023 through March 22, 2025, for which he was without fault, because it failed to properly deduct life insurance premiums from his FECA wage-loss compensation. OWCP denied waiver of recovery of the overpayment and required recovery in the full amount of $3,256.33.

By decision dated February 27, 2026, an OWCP hearing representative affirmed the June 17, 2025 termination decision.

On June 11, 2026 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review with regard to the September 4, 2025 overpayment determination.

By decision dated June 12, 2026, OWCP denied appellant's prerecoupment hearing request, finding that it was not made within 30 days of the June 11, 2025 preliminary overpayment determination and was therefore untimely filed.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim under FECA, it has the burden of justifying termination or modification of compensation benefits.[5]

Section 10.500(a) of the Code of Federal Regulations provides:

> "(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing establishment had offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work

[5] *See L.C.,* Docket No. 25-0082 (issued December 26, 2024); *S.V.,* Docket No. 17-1268 (issued March 23, 2018); *I.J.,* 59 ECAB 408 (2008).

restrictions. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)"[6]

OWCP's procedures also provide that if the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions is available, and the employee was notified in writing that such light duty was available, then wage-loss benefits are not payable for the duration of light-duty availability, since such benefits are payable only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.[7] The claims examiner must provide a pretermination notice if the claimant is being removed from the periodic rolls.[8] When a temporary light-duty assignment either ends or is no longer available, the claimant is entitled to compensation and should be returned to the periodic rolls immediately as long as medical evidence supports any disabling residuals of the work-related condition.[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation for the period June 17 through July 23, 2025, pursuant to 20 C.F.R. § 10.500(a).

OWCP referred appellant to Dr. Patel for an opinion regarding appellant's work capacity. In a Form OWCP-5c dated February 10, 2025, he recommended sedentary-duty work restrictions for six months.

On February 28, 2025 the employing establishment offered appellant a job as a full-time modified processing clerk beginning March 1, 2025. The duties were identified as intermittently handling IRS mail, checking in and out scanners, verifying placards, firm caller mail sorting and scanning, and manual letter cases. The physical requirements of the position included intermittent sitting for 90 percent of the day, intermittent standing and walking for up to 2 hours and 40 minutes per day, and intermittent reaching above shoulder height, simple grasping, and fine manipulation for up to 8 hours per day.

OWCP subsequently issued a notice of proposed reduction of wage-loss compensation on April 17, 2025, noting that appellant had been offered a "temporary" light-duty assignment.

Pursuant to 20 C.F.R. § 10.500(a), OWCP had the burden of proof to establish that the employment position offered was temporary in nature.[10] The record establishes that when the February 28, 2025 job offer was communicated to appellant, there was no indication that it was

[6] 20 C.F.R. § 10.500(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1)(a) (June 2013).

[8] *Id.* at Chapter 2.814.9c(1)(b).

[9] *Id.* at Chapter 2.814.9c(1)(d).

[10] *See G.D.,* Docket No. 25-0578 (issued July 7, 2025); *N.H.,* Docket No. 24-0659 (issued September 19, 2024); *M.B.,* Docket No. 24-0478 (issued June 5, 2024); *A.W.,* Docket No. 21-1287 (issued September 22, 2023); *C.W.,* Docket No. 18-1779 (issued May 6, 2019).

temporary in nature. As OWCP has not established that the offered modified job was a temporary position, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation for the period June 17 through July 23, 2025.[11]

LEGAL PRECEDENT -- ISSUE 3

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.[12] The date of the request is determined by the postmark or other carrier's date marking, or the date received in the Employees' Compensation Operations &Management Portal (ECOMP).[13] Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.[14] The only right to a review of a final overpayment decision is with the Board.[15] The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.[16]

ANALYSIS -- ISSUE 3

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 11, 2025. It advised appellant that he had 30 days to request a prerecoupment hearing. In an overpayment action request form dated June 11, 2026, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. The 30th day following OWCP's June 11, 2025 preliminary overpayment determination was July 11, 2025. There is no provision in FECA or its regulations which allows an exception to the 30-day time limitation for requesting a prerecoupment hearing.[17] Since the June 11, 2026 request for a prerecoupment hearing was made more than 30 days after the June 11, 2025 preliminary overpayment determination, it was untimely.[18] OWCP thus properly denied appellant's request for a prerecoupment hearing.[19]

[11] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[12] 20 C.F.R. § 10.432.

[13] *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).

[14] *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).

[15] *Id.* at § 10.440(b).

[16] *Id*.

[17] *Supra* note 14; *D.R.,* Docket No. 19-1885 (issued April 24, 2020).

[18] 20 C.F.R. §§ 10.439, 10.616(a); *see D.C., supra* note 14; *S.G.,* Docket No. 22-0476 (issued August 11, 2022); *A.B.,* Docket No. 18-1172 (issued January 15, 2019).

[19] *See S.D.*, Docket No. 25-0125 (issued March 5, 2025); *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).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation for the period June 17 through July 23, 2025, pursuant to 20 C.F.R. § 10.500 (a). The Board further finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2026 decision of the Office of Workers' Compensation Programs is reversed. The June 12, 2026 decision is affirmed.

Issued: October 13, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board