

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

E.G., Appellant)	
)	
and)	Docket No. 19-0176
)	Issued: February 23, 2021
DEPARTMENT OF THE ARMY, BROOKE)	
ARMY MEDICAL CENTER,)	
Fort Sam Houston, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 31, 2018 appellant filed a timely appeal from a May 31, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from OWCP's last merit decision, dated April 17, 2018, to the filing of this appeal, 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

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated September 3, 2019, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0176 (issued September 3, 2019).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 31, 2018 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.*

ISSUE

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

FACTUAL HISTORY

On February 18, 2003 appellant, then a 52-year-old general facilities officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she was sitting in an office chair that broke, causing her to fall on the floor, while in the performance of duty.⁴ On April 2, 2003 OWCP accepted the claim for contusion of both hips and thighs. It subsequently expanded acceptance of the claim to include cervical and lumbar sprain, thoracic or lumbosacral neuritis or radiculitis, and incisional hernia. OWCP paid appellant wage-loss compensation on the supplemental rolls as of December 1, 2003 and on the periodic rolls as of June 10, 2007.

On March 14, 2018 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$44,039.05 because her wage-loss compensation payments for the period December 1, 2012 through February 3, 2018 had not been reduced to offset her Social Security Administration (SSA) age-related retirement benefits that were attributable to federal service. It determined that appellant 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 the repayment. 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 notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated April 17, 2018, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$44,039.05 for the period December 1, 2012 through February 3, 2018 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 no response had been received to the preliminary overpayment questionnaire and that appellant had not requested waiver of recovery of the overpayment. It required recovery of the overpayment by deducting \$358.00 every 28 days from appellant's continuing compensation payments.

On April 24, 2018 OWCP received an overpayment action request form, dated April 17, 2018 and postmarked April 18, 2018, in which appellant requested a prerecoupment hearing.

⁴ The record also contains a Standard Form-50 indicating under retirement plan Federal Insurance Contributions Act and Civil Service Retirement System (Partial), rather than the Federal Employees Retirement System. However, as noted previously, the Board does not have jurisdiction to review the merits of the final overpayment determination.

Appellant requested waiver of recovery of the overpayment and asserted that she was being treated unfairly and would suffer severe financial and emotional hardship in attempting to repay the debt.

By decision dated May 31, 2018, OWCP denied appellant's request for a precoupment hearing as untimely filed. It found that, because her request was not filed within 30 days of the March 14, 2018 preliminary overpayment determination, she was not entitled to a precoupment hearing as a matter of right.

LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a precoupment hearing with respect to an overpayment.⁵ The date of the request is determined by the postmark or other carrier's date marking.⁶ Failure to request the precoupment hearing within 30 days constitutes a waiver of the right to a hearing.⁷ The only right to a review of a final overpayment decision is with the Board.⁸ The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.⁹

ANALYSIS

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

OWCP issued a preliminary overpayment determination on March 14, 2018. It advised appellant that she had 30 days from that date to request a precoupment hearing. The record indicates that OWCP properly mailed its preliminary determination to appellant's last known address of record.

Appellant did not request a precoupment hearing within 30 days of March 14, 2018. Consequently, by decision dated April 17, 2018, OWCP properly finalized its preliminary overpayment determination.

On April 24, 2018 OWCP received an overpayment action request form, dated April 17, 2018 and postmarked April 18, 2018, in which appellant requested a precoupment hearing. The timeliness of a request for a precoupment hearing is determined by the postmark date or other carrier's marking showing when the request was sent to OWCP.¹⁰ As appellant's request for a precoupment hearing was postmarked on April 18, 2018, more than 30 days after the March 14,

⁵ 20 C.F.R. § 10.432; *see 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).

⁶ *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).

⁷ *Id.*

⁸ 20 C.F.R. § 10.440(b).

⁹ 5 U.S.C. § 8124(b); *see G.L.*, Docket No. 19-0297 (issued October 23, 2019).

¹⁰ *B.W.*, *supra* note 6.

2018 preliminary overpayment determination, it was untimely filed. Therefore, OWCP properly denied appellant's request for a precoupment hearing as untimely filed.¹¹

The Board further finds that, as appellant's request form was mailed to OWCP's Branch of Hearings and Review, it was properly treated as a request for a hearing. As noted, the hearing provisions of section 8124(b) are not applicable to final overpayment decisions. OWCP's regulations provide that when a final overpayment decision is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request.¹² The only right to appeal is with the Board.¹³ As appellant's April 18, 2018 request for a precoupment hearing was made after the final overpayment determination, the Board finds that OWCP properly denied appellant's request for a hearing after issuance of the final overpayment determination.¹⁴

CONCLUSION

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

¹¹ See *B.W.*, *supra* note 6; *E.V.*, Docket No. 17-1328 (issued December 11, 2017); *see also R.U.*, Docket No. 16-0027 (issued March 24, 2017).

¹² *Supra* note 7.

¹³ 5 U.S.C. § 8124(b); *see S.O.*, *supra* note 5; *G.L.*, *supra* note 9.

¹⁴ *See E.M.*, *supra* note 5; *D.H.*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2018 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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