

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

A.L., Appellant	)	
	)	
and	)	<b>Docket No. 09-1592</b>
	)	<b>Issued: March 4, 2010</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Capitol Heights, MD, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 8, 2009 appellant filed a timely appeal from a January 12, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for a prerecoupment hearing. As there is no merit decision within 180 days of the last Office decision dated November 24, 2008, the Board lacks jurisdiction to review the merits of this case under 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly denied appellant's request for a prerecoupment hearing.

---

<sup>1</sup> The appeal was postmarked June 2, 2009. The Office issued the last merit decision on November 24, 2008.

## **FACTUAL HISTORY**

On March 2, 1999 appellant, then a 28-year-old part-time flexible mail handler, filed a claim alleging that she sustained a muscle sprain of the left arm and shoulder on that date in the performance of duty. The Office accepted the claim for a left shoulder sprain. After sustaining intermittent periods of disability, she stopped work on February 20, 2003 and did not return. The Office paid appellant compensation for total disability.

On February 12, 2008 the Office notified appellant of its preliminary determination that she received an overpayment of \$6,489.53 for the period January 22, 2006 through November 25, 2007 because it failed to deduct health care premiums. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. On February 15, 2008 appellant submitted a completed overpayment recovery form and requested a prerecoupment hearing. Following a preliminary review, a hearing representative found that the case was not in posture for a hearing. She found that the overpayment occurred but that the Office did not correctly calculate the overpayment as it also failed to deduct basic and optional life insurance.

On October 10, 2008 the Office advised appellant of its preliminary determination that he received an overpayment of \$6,868.44 because it failed to withhold premiums for health care and basic life insurance from her compensation for the period January 22, 2006 to September 27, 2008. It further advised her of its preliminary determination that she was without fault in creating the overpayment. The Office requested that appellant complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified her 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.

On November 24, 2008 the Office finalized its finding that appellant received a \$6,868.44 overpayment of compensation for the period January 22, 2006 through November 24, 2007 because it failed to deduct health care premiums and basic life insurance from her compensation. It further finalized its finding that she was without fault in creating the overpayment. The Office noted that appellant had not responded to its preliminary determination of overpayment and denied waiver as she had not submitted financial information supporting the need for waiver. It determined that it would recover the overpayment by withholding \$290.00 from her continuing compensation.

In an overpayment action request form signed November 26, 2008, appellant requested a prerecoupment hearing by teleconference. In a decision dated January 12, 2009, the Office denied her request for a hearing after finding that she did not timely request a hearing on the preliminary notice of overpayment and as a final overpayment decision was not subject to a hearing under 5 U.S.C. § 8124.

## **LEGAL PRECEDENT**

The Office regulations on the recovery of overpayments provide that before collecting the overpayment, it must provide the claimant with written notice of the fact and amount of the overpayment, the finding of fault, the right to submit evidence challenging the fact, amount or

finding of fault and the right to request waiver of the overpayment.<sup>2</sup> The Office's regulations further provide that a claimant may request a precoupment hearing with respect to an overpayment.<sup>3</sup> Failure to request the precoupment hearing within 30 days shall constitute a waiver of the right to a hearing.<sup>4</sup> The only right to a review of a final overpayment decision is to the Board.<sup>5</sup> The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.<sup>6</sup>

### ANALYSIS

The Office's October 10, 2008 preliminary determination of overpayment provided appellant with a right to request a precoupment hearing within 30 days. As noted above, if a claimant does not request a hearing within 30 days, it is considered a waiver of the right to a hearing. When the final overpayment decision is issued, there is no right to a hearing or a review of the written record, and the Office does not have discretion to grant such a request. The only right to appeal is to the Board.<sup>7</sup> In this case, appellant requested a precoupment hearing on November 26, 2008, more than 30 days after the preliminary overpayment finding and 2 days after the November 24, 2008 overpayment decision. Once the Office issued the final overpayment decision on November 24, 2008, her only right of appeal was to the Board. The Board finds that the Office properly denied appellant's November 26, 2008 request for a hearing as she was not entitled to a hearing with respect to a final overpayment decision.<sup>8</sup>

### CONCLUSION

The Board finds that the Office properly denied appellant's request for a precoupment hearing.

---

<sup>2</sup> 20 C.F.R. § 10.431.

<sup>3</sup> *Id.* at § 10.432.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 10.440(b).

<sup>6</sup> *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997).

<sup>7</sup> *Id.* at § 10.440(b)

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 12, 2009 is affirmed.

Issued: March 4, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board