

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

C.R., Appellant	)	
	)	
and	)	Docket No. 21-0672
	)	Issued: September 29, 2021
DEPARTMENT OF THE NAVY, MARINE	)	
CORPS LOGISTICS BASE, Barstow, CA,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 15, 2021 appellant filed a timely appeal from a November 13, 2020 merit decision and a February 11, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly suspended appellant's compensation benefits, effective December 6, 2020, for failure to complete a Form CA-1032 as requested; and (2) whether it properly denied appellant's request for a prerecoupment hearing as untimely filed.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 5, 1993 appellant, then a 38-year-old railroad repairer, filed a traumatic injury claim (Form CA-1) alleging that as he was pulling a railroad spike, it suddenly gave way, pulling his shoulder and neck, while in the performance of duty. OWCP accepted the claim for cervical strain and spasmodic torticollis. It paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002 and pursuant to loss of wage-earning capacity determinations dated December 31, 2007 and October 26, 2012.

Over the years, OWCP periodically requested that appellant submit financial disclosure statements (Form CA-1032), which solicited information about his employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

On September 14, 2020 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or his benefits would be suspended. OWCP mailed the notice to appellant's last known address.

By decision dated November 13, 2020, OWCP suspended appellant's compensation benefits, effective December 6, 2020, for failing to complete the Form CA-1032 it had sent to him on September 14, 2020, as requested. It advised that, if he were to complete and return the form, his compensation benefits would be restored retroactively to the date they were suspended.

On December 4, 2020 OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$5,207.66, for the period January 1 through November 7, 2020 because his wage-loss compensation payments had not been reduced to offset his 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 he 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 him that he could request a waiver of the repayment. It further requested that he 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 provided appellant with an overpayment action request form and notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

OWCP received additional evidence.

On January 20, 2021 OWCP received an overpayment action request form dated January 15, 2021 in which appellant requested a prerecoumment hearing. Appellant noted that he disagreed with the amount of the overpayment and requested waiver of recovery because he was found to be without fault in the creation of the overpayment. He further noted that the error was made by OWCP and he did not have any knowledge of the matter.

By decision dated February 11, 2021, OWCP denied appellant's request for a prerecoumment hearing as untimely filed. It found that, because his request was not filed within 30 days of the December 4, 2020 preliminary overpayment determination, he was not entitled to a prerecoumment hearing as a matter of right.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>2</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work, which the employee has performed for the prior 15 months.<sup>3</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective December 6, 2020, for failure to complete the Form CA-1032 as requested.

On September 14, 2020 OWCP provided appellant with a Form CA-1032. It properly advised him that, if he did not completely answer all of the questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.<sup>5</sup> Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.<sup>6</sup>

The record indicates that appellant failed to timely submit the Form CA-1032 within 30 days of OWCP's request. Appellant was receiving wage-loss compensation and he was, therefore, required to complete the Form CA-1032. His failure to file a Form CA-1032 within 30 days

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<sup>2</sup> 5 U.S.C. § 8106(b).

<sup>3</sup> 20 C.F.R. § 10.528. *See also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *M.S.*, Docket No. 18-1107 (issued December 28, 2018); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>4</sup> *Id.*; *see also id.* at § 10.525.

<sup>5</sup> *See H.B.*, *supra* note 3; *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>6</sup> *Id.*

resulted in the suspension of compensation. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective December 6, 2020, pursuant to 20 C.F.R. § 10.528.

### **LEGAL PRECEDENT -- ISSUE 2**

OWCP's regulations provide that a claimant may request a prerecoument hearing with respect to an overpayment.<sup>7</sup> The date of the request is determined by the postmark or other carrier's date marking.<sup>8</sup> Failure to request the prerecoument hearing within 30 days constitutes a waiver of the right to a hearing.<sup>9</sup> The only right to a review of a final overpayment decision is with the Board.<sup>10</sup> The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

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

OWCP issued a preliminary overpayment determination on December 4, 2020. It advised appellant that he had 30 days from that date to request a prerecoument hearing. The record indicates that OWCP properly mailed its preliminary overpayment determination to appellant's last known address of record.

Appellant did not request a prerecoument hearing within 30 days of December 4, 2020.

On January 20, 2021 OWCP received appellant's January 15, 2021 request for a prerecoument hearing. The timeliness of a request for a prerecoument hearing is determined by the postmark date or other carrier's marking showing when the request was sent to OWCP.<sup>12</sup> As appellant's request for a prerecoument hearing was dated January 15, 2021, more than 30 days after the December 4, 2020 preliminary overpayment determination, it was untimely filed. Therefore, OWCP properly denied appellant's request for a prerecoument hearing as untimely filed.<sup>13</sup>

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<sup>7</sup> 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).

<sup>8</sup> *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).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.440(b).

<sup>11</sup> 5 U.S.C. § 8124(b); *see G.L.*, Docket No. 19-0297 (issued October 23, 2019).

<sup>12</sup> *See also B.W.*, *supra* note 8.

<sup>13</sup> *See B.W., id.*; *E.V.*, Docket No. 17-1328 (issued December 11, 2017); *see also R.U.*, Docket No. 16-0027 (issued March 24, 2017).

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.<sup>14</sup> The only right to appeal is with the Board.<sup>15</sup> As appellant's January 15, 2021 request for a prerecoupment hearing was made more than 30 days after the December 4, 2020 preliminary overpayment determination, the Board finds that OWCP properly denied appellant's request for a hearing.<sup>16</sup>

### CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective December 6, 2020, for failure to complete a Form CA-1032 as requested. The Board further finds that OWCP properly denied appellant's request for a prerecoupment hearing as untimely filed.

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<sup>14</sup> *Supra* note 11.

<sup>15</sup> 5 U.S.C. § 8124(b); *see S.O.*, *supra* note 7; *G.L.*, *supra* note 11.

<sup>16</sup> *See E.M.*, *supra* note 7; *D.H.*, *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2020 and February 11, 2021 and decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 29, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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