

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

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**M.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Medford, NJ, Employer**

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**Docket No. 22-0437  
Issued: July 29, 2022**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 19, 2022 appellant filed a timely appeal from an October 15, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated June 28, 2021 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 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 June 21, 1993 appellant, then a 39-year-old rural carrier, filed an occupational disease claim (Form CA-2), alleging that she developed right shoulder acromioclavicular joint osteoarthritis, shoulder impingement, rotator cuff tendinitis, and bicipital tendinitis due to factors of her federal employment which required repetitive right shoulder and arm motion. She first became aware on March 17, 1993 that the diagnosed conditions were caused or aggravated by her employment. Appellant stopped work on March 23, 1993. OWCP accepted the claim for right shoulder impingement syndrome and right rotator cuff tendinitis. It subsequently expanded acceptance of the claim to include right shoulder adhesive capsulitis and major depression. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing December 7, 1997 and on the periodic rolls commencing April 20, 2003.

On August 26, 2021 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$ 18,310.62 for the period May 1, 2020 through July 17, 2021 because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without appropriate offset. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) and 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, it provided an overpayment action request form and advised her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written record, or request a prerecoupment hearing.

On September 16, 2021 OWCP received a completed overpayment recovery questionnaire form and an overpayment action request form, both dated September 10, 2021, noting that appellant contested the overpayment. Appellant disagreed that the overpayment occurred and requested waiver because she was found to be without fault in the creation of the overpayment. She stated that she was receiving her deceased husband's social security benefits.

By overpayment action request form, dated September 27, 2021, appellant requested a prerecoupment hearing.<sup>3</sup>

By decision dated October 15, 2021, OWCP's Branch of Hearings and Review denied appellant's request for a prerecoupment hearing as untimely filed. It found that, because her request was not received within 30 days of the August 26, 2021 preliminary overpayment determination, she was not entitled to a prerecoupment hearing as a matter of right.

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<sup>3</sup> The case record does not contain an accompanying envelope showing a postmark or other carrier's date of marking. Appellant noted that the form had been faxed to the Branch of Hearings and Review on September 27, 2021.

## LEGAL PRECEDENT

OWCP's regulations provide that a claimant may request a precouplement hearing with respect to an overpayment.<sup>4</sup> Failure to request a precouplement hearing within 30 days constitutes a waiver of the right to a hearing.<sup>5</sup> In computing a time period, the date of the event from which the designated period of time begins to run shall not be included, while the last day of the period so computed shall be included unless it is a Saturday, Sunday, or a federal holiday.<sup>6</sup> The date of the request is determined by the postmark or other carrier's date marking.<sup>7</sup> The test used in 20 C.F.R. § 10.616(a) for determining the timeliness of hearing requests should apply to requests for precouplement hearings. Accordingly, timeliness is determined by the postmark on the envelope, if available. Otherwise, the date of the letter itself should be used.<sup>8</sup>

## ANALYSIS

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

The timeliness of a request for a precouplement hearing is determined by the postmark date or other carrier's marking showing when the request was sent to OWCP.<sup>9</sup> OWCP issued its preliminary overpayment determination on August 26, 2021. The 30<sup>th</sup> day from August 26, 2021 was September 25, 2021. As this fell on a Saturday, appellant had until Monday, September 27, 2021 to request a precouplement hearing.<sup>10</sup> As appellant's request for a precouplement hearing was dated and received on Monday, September 27, 2021, it was timely filed.<sup>11</sup> The Board thus finds that OWCP improperly denied appellant's request for a precouplement hearing.<sup>12</sup>

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<sup>4</sup> 20 C.F.R. § 10.432; *see V.M.*, Docket No. 21-0914 (issued February 16, 2022); *E.G.*, Docket No. 19-0176 (issued February 23, 2021); *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>5</sup> *Id.*

<sup>6</sup> *See V.M.*, *supra* note 4.; *B.W.*, Docket No. 16-1860 (issued May 4, 2017); *M.R.*, Docket No. 11-970 (issued August 12, 2011); *Donna A. Christley*, 41 ECAB 90 (1989). *See also John B. Montoya*, 43 ECAB 1148 (1992).

<sup>7</sup> *Supra* note 4 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>8</sup> *See V.M.*, *supra* note 4; *J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001), *citing William J. Kapfhammer*, 42 ECAB 271 (1990); *see also Douglas McLean*, 42 ECAB 759 (1991).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Id.*

<sup>12</sup> *See V.M.*, *supra* note 4; *E.G.*, *supra* note 4; *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).

On remand, OWCP shall conduct a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review, to be followed by any necessary further development and a *de novo* decision.<sup>13</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 15, 2021 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 29, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> *V.M., supra* note 4; *Order Remanding Case, N.G., (T.G.)*, Docket No. 19-1482 (issued September 17, 2020); *C.R.*, Docket No. 15-0525 (issued July 20, 2015).