

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

M.F., Appellant	)	
	)	
and	)	Docket No. 23-0063
	)	Issued: August 4, 2023
U.S. POSTAL SERVICE, DOMINICK V.	)	
DANIELS PROCESSING & DISTRIBUTION	)	
CENTER, Kearny, NJ, Employer	)	
	)	

*Appearances:*  
Robert D. Campbell, Esq., for the appellant<sup>1</sup>  
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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 17, 2022 appellant, through counsel, filed a timely appeal from an August 2, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> As there is

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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 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> The Board notes that counsel requested an appeal from a June 16, 2022 purported decision of OWCP. The June 16, 2022 correspondence from OWCP, however, pertained to the collection of an overpayment that was previously affirmed by the Board. 20 C.F.R. § 501.6(d). On January 4, 2022 OWCP noted that appellant was no longer receiving wage-loss compensation. The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. *See M.D.*, Docket No. 22-0694 (issued November 22, 2022); *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000); *Lorenzo Rodriguez*, 51 ECAB 295 (2000). The only final adverse decision of OWCP within the Board's jurisdiction is the August 2, 2022 nonmerit decision.

no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

### **ISSUE**

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

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On June 4, 2018 appellant, then a 61-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2018 he pulled his right hamstring climbing out of a truck while in the performance of duty. OWCP accepted the claim for a complex tear of the medial meniscus of the right knee. It subsequently expanded its acceptance of the claim to include a permanent aggravation of right knee arthritis. OWCP paid appellant wage-loss compensation on the supplemental rolls effective January 26, 2019, and on the periodic rolls effective March 31, 2019.

By decision dated December 13, 2021, the Board affirmed OWCP's October 21, 2020 decision, finding that appellant received an overpayment of compensation in the amount of \$12,223.48 for the period May 1, 2019 through February 29, 2020 because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset.<sup>5</sup> The Board further affirmed OWCP's denial of waiver of recovery of the overpayment and determined that it properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments.

On January 4, 2022 OWCP noted that appellant was no longer receiving OWCP compensation. It advised that he should continue to submit \$500.00 as recovery of the overpayment.

On January 20, 2022 OWCP notified appellant of its preliminary determination that he had received a \$502.25 overpayment of compensation for the period December 5, 2021 through January 1, 2022 because it had issued a duplicate compensation payment. It further advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment action request form and overpayment recovery questionnaire (Form OWCP-20) with supporting documentation and

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Order Dismissing Appeal*, Docket No. 20-1244 (issued July 31, 2020); Docket No. 21-0359 (issued December 13, 2021).

<sup>5</sup> *Id.*

advised him that he could request waiver of recovery of the overpayment. Additionally, it informed him that he could request a final decision based on the written evidence, or a prerecoupment hearing.

Appellant subsequently submitted a completed Form OWCP-20 dated March 10, 2022, but did not submit supporting financial documentation.

In an overpayment action request form dated July 11, 2022 and postmarked July 12, 2022, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 2, 2022, OWCP denied appellant's request for a prerecoupment hearing. It found that he had made the request more than 30 days after the January 20, 2022 decision.

### **LEGAL PRECEDENT**

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.<sup>6</sup> The date of the request is determined by the postmark or other carrier's date marking.<sup>7</sup> Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.<sup>8</sup> The only right to a review of a final overpayment decision is with the Board.<sup>9</sup> The hearing provisions of section 8124(b) of FECA do not apply to final overpayment decisions.<sup>10</sup>

### **ANALYSIS**

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

The last preliminary overpayment determination issued by OWCP was dated January 20, 2022. It advised appellant that he had 30 days to request a prerecoupment hearing. In a form dated July 11, 2022 and postmarked July 12, 2022, appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. Since the July 12, 2022 request for a prerecoupment hearing was made more than 30 days after the January 30, 2022

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<sup>6</sup> 20 C.F.R. § 10.432.

<sup>7</sup> *Id.* at §§ 10.439, 10.616(a).

<sup>8</sup> *Id.* at § 10.432; *see also 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).

<sup>9</sup> 20 C.F.R. § 10.440(b).

<sup>10</sup> *Id.*

preliminary overpayment determination, it was untimely.<sup>11</sup> OWCP thus properly denied his request for a prerecoupment hearing.<sup>12</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy 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>11</sup> 20 C.F.R. §§ 10.439, 10.616(a); *see S.G.*, Docket No. 22-0476 (issued August 11, 2022); *A.B.*, Docket No. 18-1172 (issued January 15, 2019).

<sup>12</sup> *See 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).