

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

G.B., Appellant)

and)

DEPARTMENT OF DEFENSE, DEFENSE)
LOGISTICS AGENCY, SHARPE ARMY)
DEPOT, Lathrop, CA, Employer)

**Docket No. 24-0652
Issued: July 30, 2024**

Appearances:
James Wright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 21, 2024 appellant, through her representative, filed a timely appeal from November 30, 2023 and April 9, 2024 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated October 27, 2023 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ 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.

ISSUE

The issue is whether OWCP properly denied appellant's requests for a prerecoumment hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 19, 1993 appellant, then a 41-year-old production controller, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left knee injury when she slid out of a booth and heard a pop in her left leg while in the performance of duty. OWCP accepted the claim for left knee sprain, bilateral knee chondromalacia patella, right knee localized secondary osteoarthritis, psychic factors, lumbar sprain, and lumbosacral spondylosis.³ The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls, as of June 16, 2002.⁴

By decision dated March 22, 2019, OWCP determined that appellant forfeited her entitlement to compensation from August 7, 2004 through September 24, 2018, because she knowingly failed to report her outside employment, involvement in a business enterprise, and volunteer work.

On March 26, 2019 OWCP issued a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$370,431.46, because she forfeited her entitlement to wage-loss compensation for the period August 7, 2004 through September 24, 2018. It further found that she was at fault in the creation of the overpayment because she made an incorrect statement as to a material fact, which she knew or should have known to be incorrect. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which supported income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoumment hearing.

² Docket No. 20-0536 (issued January 20, 2023).

³ Appellant retired from federal service in 1999 due to disability.

⁴ The present claim was assigned OWCP File No. xxxxxx117. Under OWCP File No. xxxxxx323, OWCP accepted that on April 4, 1983 appellant sustained a right knee contusion and right knee chondromalacia when she slipped and fell while in the performance of duty. Under OWCP File No. xxxxxx229, it accepted that on September 1, 1983 she twisted her right knee and ankle when she tripped on an uneven floor while in the performance of duty. OWCP accepted appellant's claim for aggravation of right knee chondromalacia. It has administratively combined OWCP File Nos. xxxxxx17, xxxxxx323, and xxxxxx229, with the present claim serving as the master file.

On April 10, 2019 appellant requested a prerecoument hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's March 22, 2019 forfeiture decision and the March 26, 2019 preliminary overpayment notice. She disagreed that an overpayment occurred and that she was at fault in the creation of the overpayment.

On August 9, 2019 a telephonic hearing was held regarding OWCP's forfeiture decision and preliminary overpayment determination.

By decision dated October 22, 2019, OWCP's hearing representative affirmed the March 22, 2019 forfeiture decision. By separate decision dated October 22, 2019, the hearing representative finalized the March 26, 2019 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$370,431.46, because she knowingly failed to report employment activity and volunteer work for the period August 7, 2004 through September 24, 2018. OWCP further found that appellant was at fault in the creation of the overpayment and therefore precluded from waiver of recovery of the overpayment.

On January 10, 2020 appellant, through her representative, appealed the October 22, 2019 merit decisions to the Board. By decision dated January 20, 2023, the Board affirmed in part and reversed in part, finding that OWCP improperly determined that appellant forfeited her entitlement to wage-loss compensation for the period August 7, 2004 through August 10, 2010, but properly determined that she forfeited her entitlement to wage-loss compensation for the period August 11, 2010 through September 24, 2018. The Board further found that OWCP improperly determined that she received an overpayment of compensation for the period August 7, 2004 through August 10, 2010, but properly determined that she received an overpayment of compensation for the period August 11, 2010 through September 24, 2018. The Board found that OWCP improperly determined that appellant was at fault in the creation of the overpayment for the period August 7, 2004 through August 10, 2010, but properly determined that she was at fault in the creation of the overpayment for the period August 11, 2010 through September 24, 2018. The Board determined that the case was not in posture for decision with regard to the amount of the overpayment. The case was remanded to OWCP for further proceedings.

In a February 24, 2023 preliminary overpayment determination, OWCP determined that appellant had received an overpayment of compensation in the amount of \$223,759.22, because she forfeited her entitlement to wage-loss compensation for the period August 11, 2010 through September 24, 2018. It further found that she was at fault in the creation of the overpayment because she failed to report employment, involvement in a business enterprise, and volunteer work. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable recovery method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which supported income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence, or a prerecoument hearing.

On March 10, 2023 appellant requested a prerecoupment hearing on the issues of fault and waiver before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 17, 2023.

By decision dated October 27, 2023, the OWCP hearing representative finalized the February 24, 2023 preliminary overpayment notice.

On November 27, 2023 appellant, through her representative, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

On November 28, 2023 appellant, through her representative, requested reconsideration.

By decision dated November 30, 2023, OWCP denied appellant's request for an oral hearing or a review of the written record as she had received the October 27, 2023 decision by the Branch of Hearings and Review on the same issue.⁵

On March 20, 2024 appellant requested another prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

By letter dated April 9, 2024, OWCP denied appellant's request for another prerecoupment hearing. It advised that the Branch of Hearings and Review had issued decisions on October 27, and November 30, 2023. Since appellant had already received a decision by the Branch of Hearings and Review, she was not entitled to either an oral hearing or a review of the written record on the same issue.

LEGAL PRECEDENT

OWCP's regulations provide that before collecting an 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.⁶ The regulations further provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁷ However, once the overpayment decision

⁵ By letter dated February 22, 2024, OWCP advised appellant that it had received her November 28, 2023 letter requesting reconsideration. However, as appellant had received the October 27, 2023 decision from the Branch of Hearings and Review, the only applicable appeal option was an appeal to the Board. By letter dated March 4, 2024, appellant's representative again requested that OWCP waive the overpayment. By letter dated March 20, 2024, OWCP advised appellant that the October 27, 2023 overpayment decision was a final decision. It advised her that her only review right was appeal to the Board. OWCP further advised that appellant could submit additional financial documentation to establish financial hardship.

⁶ 20 C.F.R. § 10.431.

⁷ *Id.* at § 10.432.

has been finalized, the only right to review of a final overpayment decision is to the Board.⁸ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.⁹

ANALYSIS

The Board finds that OWCP properly denied appellant's requests for a prerecoumpment hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124(b).

The record reflects that a prerecoumpment hearing was held on August 17, 2023, with regard to OWCP's February 24, 2023 preliminary overpayment determination. In an October 27, 2023 decision, OWCP's hearing representative finalized the February 24, 2023 preliminary overpayment notice. Appellant then requested another prerecoumpment hearing regarding the overpayment decision on November 27, 2023 and on March 20, 2024. However, the Board finds that OWCP properly determined that appellant was not entitled to a second hearing under section 8124 after OWCP's hearing representative finalized the February 24, 2023 preliminary overpayment determination on October 27, 2023.

OWCP's regulations and Board case law are clear that the only right to review of a final overpayment decision is an appeal to the Board.¹⁰ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to final overpayment decisions. The Branch of Hearings and Review has no discretion to grant a hearing after an overpayment decision has been finalized. Accordingly, the Board finds that OWCP properly denied appellant's requests for hearing, after issuance of the final overpayment determination.

CONCLUSION

The Board finds that OWCP properly denied appellant's requests for a prerecoumpment hearing before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124(b).

⁸ *Id.* at § 10.440(b).

⁹ *Id.*; *see T.M.*, Docket No. 20-1085 (issued December 31, 2020); *see also G.G.*, Docket No. 12-159 (issued May 24, 2012); *R.H.*, Docket No. 11-1790 (issued April 2, 2012); *Philip G. Feland*, 48 ECAB 485 (1997).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2023 and April 9, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 30, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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