

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS C. NORTON and U.S. POSTAL SERVICE,
POST OFFICE, Smyrna, Ga.

*Docket No. 96-2579; Submitted on the Record;
Issued October 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$1,838.07 for the period January 29 through February 25, 1993; (2) whether the Office properly determined that appellant was at fault in the creation of the overpayment; and (3) whether the Office properly required that the overpayment should be recovered in monthly increments of \$100.00.

On June 24, 1992 appellant, then a 45-year-old letter carrier, sustained employment-related right knee and lumbosacral strains for which he received appropriate continuation of pay for the period July 29 to September 11, 1992. By letter dated January 4, 1993, the Office informed appellant that he would receive compensation, effective September 12, 1992 through March 6, 1993,¹ and Office computer records confirm that appellant was paid compensation for this period.² Employing establishment leave records and appellant's earnings statements indicate that he received leave compensation for pay periods beginning January 23, 1993 and ending March 5, 1993.

On July 13, 1994 the Office issued a preliminary determination that an overpayment of compensation occurred in appellant's case in the amount of \$1,838.07 which resulted because appellant received compensation and wages for the period January 29 to February 25, 1993. The Office further found that appellant was at fault in creating the overpayment because he knew or should have known that upon his return to work he was not entitled to receive both compensation and wages for the same time period. The Office informed appellant of his right to a prerecoupment hearing and enclosed an overpayment recovery questionnaire for review in determining whether the overpayment should be waived if he were found to be without fault.

¹ The Office indicated that appellant would receive a lump-sum payment for the period September 12 to December 23, 1992 and periodic payments every four weeks thereafter.

² The record indicates that appellant has not received wage-loss compensation since that time. He returned to work on May 3, 1993, worked briefly and was granted a six-month leave of absence on May 20, 1993.

Following appellant's request,³ a hearing was held on January 24, 1996. Appellant testified that he should not be required to repay the overpayment because he was not aware of the time periods the compensation covered and had no access to payment records. He further testified that an employing establishment supervisor informed him that he could take leave and receive compensation, and he and his wife testified regarding their expenses.

By decision dated April 9, 1996, an Office hearing representative found that appellant was overpaid \$1,838.07 for the period January 29 to February 25, 1993 because he concurrently received wage-loss compensation from the Office and leave compensation from the employing establishment. The hearing representative further found that appellant was at fault in the creation of the overpayment of compensation because he should have been aware that this was incorrect and ordered that appellant repay the overpayment in monthly increments of \$100.00.

The Board finds that the Office properly found that an overpayment of compensation occurred in the amount of \$1,838.07 for the period January 29 through February 25, 1993.

The primary purpose of workers' compensation is to provide an adequate substitute for an employee's work-related loss of wage-earning capacity. In this case, employing establishment records indicate that appellant received wages for the period January 29 through February 25, 1993, and Office computer records establish that he concurrently received wage-loss compensation for this period. The Office therefore properly determined that appellant received an overpayment of compensation in the amount of \$1,838.07.

The Board further finds that the Office properly found that appellant was at fault in the creation of the overpayment of compensation.

Section 8129 of the Federal Employees' Compensation Act provides that an overpayment of compensation shall be recovered by the Office unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience."⁴ Thus, the Office may not waive the overpayment of compensation if a claimant is found to be at fault.⁵

Regarding a fault determination, section 10.320(b) of the Office's regulations provides in relevant part: "An individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect."⁶

In this case, the Office applied the third standard in determining that appellant was at fault in creating the overpayment, and, therefore, the Office must establish that, at the time

³ Appellant also submitted a completed overpayment questionnaire.

⁴ 5 U.S.C. § 8129.

⁵ See *Linda E. Padilla*, 45 ECAB 768 (1994).

⁶ 20 C.F.R. § 10.320.

appellant received the compensation in question, he knew or should have known that the payment was incorrect.⁷ The Board finds that appellant knew or should have reasonably been expected to know that he was not entitled to receive concurrent wages and wage-loss compensation for the same time period. In its January 4, 1993 letter, the Office clearly informed appellant of the time period his compensation covered, and employing establishment pay records indicate that appellant also received wages for this period. The Office therefore properly determined that appellant was at fault in the creation of the overpayment during the period January 29 through February 25, 1993.⁸

Finally, the Board finds that it does not have jurisdiction to review the Office's finding that appellant repay the \$1,838.07 overpayment in monthly increments of \$100.00. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.⁹ As appellant is no longer receiving wage-loss compensation benefits, the Board does not have jurisdiction with respect to the Office's recovery of the overpayment under the Debt Collection Act.¹⁰

The decision of the Office of Workers' Compensation Programs dated April 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 1, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ See *Linda E. Padilla*, *supra* note 5.

⁸ 20 C.F.R. § 10.313(a); see *Norman F. Bligh*, 41 ECAB 230 (1989).

⁹ See *Lewis George*, 45 ECAB 144 (1993).

¹⁰ 5 U.S.C. § 5511 *et seq.*