

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST JONES and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 98-1405; Submitted on the Record;
Issued April 10, 2000*

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 in the amount of \$7,080.00 for the period of May 20 through September 14, 1996; and (2) whether the Office properly determined that appellant was at fault in creating the overpayment.

The Board has given careful consideration to the issues involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office, dated February 4, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ Section 8129 of the Federal Employees' Compensation Act provides that an overpayment must be recovered 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." 5 U.S.C. § 8129(b). An individual who is found to have been at fault in helping to create the overpayment is not eligible for a waiver of recovery of overpayment. *Bonnye Mathews*, 45 ECAB 657, 667 (1994). Moreover, negligence on the part of the Office does not excuse an employee's acceptance of a payment which he knew or should have been expected to know was incorrect. *Russell E. Wageneck*, 46 ECAB 653, 661 (1995); *see* 20 C.F.R. § 10.320(b)(3).

The decision of the Office of Workers' Compensation Programs dated February 4, 1998 is hereby affirmed.

Dated, Washington, D.C.
April 10, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member