

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. DOUGHTY and U.S. POSTAL SERVICE,
POST OFFICE, Maple Shade, NJ

*Docket No. 98-2191; Submitted on the Record;
Issued March 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation benefits in the amount of \$1,831.20; and (2) whether the Office properly determined that appellant was not without fault in the creation of the overpayment in the amount of \$1,831.20.

The Board hereby adopts the facts as set forth in the Office hearing representative's decision dated April 8, 1998.

The Board has duly reviewed the case record in this appeal and finds that the Office properly determined that appellant received an overpayment of compensation benefits in the amount of \$1,831.20.

In this case, the record reveals that, subsequent to her return to light-duty work at the employing establishment for four hours per day, appellant received four hours of sick leave for the remainder of her eight-hour workday. The employing establishment advised the Office that appellant received compensation and sick leave for the period December 4, 1995 through February 2, 1996, and that appellant was not entitled to receive both forms of compensation at the same time. The Office's work sheet indicated that appellant received \$1,831.20 for 168 hours during the period December 4, 1995 through February 2, 1996. Inasmuch as the record is clear that appellant received both compensation and pay for sick leave during the period December 4, 1995 through February 2, 1996, the Board finds that appellant received an overpayment of compensation for that period which totaled \$1,831.20.

The Board further finds that the Office properly determined that appellant was not without fault in the creation of the overpayment in the amount of \$1,831.20.

Section 8129(a) of the Federal Employees' Compensation Act provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment

shall be made by decreasing later payments to which an individual is entitled.¹ The only exception to this requirement is a situation which meets the test set forth as follows in section 8129(b): “[a]djustment or recovery by the United States may not be made when 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.”² Thus, the Office may not waive the overpayment of compensation in this case unless appellant was without fault.³ In evaluation of whether appellant is without fault, the Office will consider whether appellant’s receipt of the overpayment occurred because she relied on misinformation given by an official source within the Office or another government agency which appellant had reason to believe was connected with administration of benefits as to the interpretation of the Act or applicable regulations.⁴

In determining whether an individual is at fault, section 10.320(b) of Title 20 of the Code of Federal Regulations provides in relevant part:

“(a) Although the Office may have been at fault in making the overpayment that fact does not relieve the overpaid individual ... from liability for repayment if such individual is not without fault.

(b) *With fault.* In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education, and physical and mental condition. 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) [A]ccepted a payment which the individual knew or should have been expected to know was incorrect.”⁵

In the instant case, the Office applied the third standard -- appellant accepted a payment which she knew or should have known was incorrect -- in finding appellant to be at fault in the creation of the overpayment. After consideration of all the particular circumstances surrounding the overpayment, the Board finds that the facts of this case establish that appellant knew or should have been expected to know that she accepted an incorrect compensation payment during

¹ 5 U.S.C. § 8129.

² 5 U.S.C. § 8129(b).

³ *Harold W. Steele*, 38 ECAB 245 (1986).

⁴ 20 C.F.R. § 10.320(c)(1).

⁵ 20 C.F.R. § 10.320(b).

the period December 4, 1995 through February 2, 1996. The Act provides that an employee who receives sick leave pay may not receive compensation for the same period.⁶ Appellant indicated on her February 13, 1996 claim for continuing compensation on account of disability (Form CA-8) that she received leave pay during the period December 4, 1995 through February 2, 1996. Appellant worked four hours and received sick leave pay for the remaining four hours of her workday.⁷ Inasmuch as appellant worked four hours and received sick leave pay for four hours, appellant should have known that she could not receive compensation from the Office for the same period. The Board finds that the Office properly determined that appellant was not without fault in the acceptance of a payment that she knew or should have been expected to know was incorrect. As appellant was not without fault with respect to this overpayment, recovery of the overpayment may not be waived.

The April 8, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, D.C.
March 13, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See 5 U.S.C. § 8116.

⁷ Although appellant indicated on her Form CA-8 and testified at the hearing that she wanted to buy back her leave, the record does not indicate that appellant did so.