

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS L. HAMPTON and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, NY

*Docket No. 00-1898; Submitted on the Record;
Issued May 24, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office properly determined that an overpayment in the amount of \$1,789.00 would be collected by withholding \$335.00 a month from his continuing compensation benefits.¹

The Office accepted that on March 25, 1989 appellant, then a 43-year-old mailhandler, sustained lumbosacral strain and an L4-5 herniated disc when he grappled with a heavy mailsack. Appellant received appropriate compensation benefits and was able to return to work performing limited duty.

On July 22, 1991 the Office rejected appellant's claims for two recurrences of disability commencing September 14, 1990 and lasting through January 14, 1992 and commencing February 12, 1991. Modification of the July 22, 1991 decision was denied on November 8, 1991, January 17 and June 22, 1992 and July 8, 1993. Appellant stopped work on June 6, 1992 and returned to limited duty on September 11, 1999 as a modified mailhandler with activity restrictions working four hours a day. He was able to perform the limited duties of this position without problems.

On December 13, 1999 the Office issued appellant a preliminary finding that an overpayment of compensation had occurred in the amount of \$1,789.00 because he had returned to limited duty on September 11, 1999 but continued to receive compensation benefits for temporary total disability until November 6, 1999. The Office further found that appellant was with fault in the creation of this overpayment as he was reminded on November 17, 1998 that if he returned to work or worked for any period of time for which he was paid temporary total disability, he must return any checks received. The Office noted that appellant did not return the erroneously paid checks for the periods he worked. The Office advised appellant of the actions

¹ Appellant did not appeal the fact or amount of the overpayment, or the issue of fault, but appealed the fact that the Office failed to give him credit for the \$1,000.00 he had already repaid the Office when the automatic withholding from continuing compensation benefits was determined.

he could take if he disagreed with the factor amount of the overpayment, or the determination of fault.²

By decision dated January 26, 2000, the Office determined that the position of modified mailhandler fairly and reasonably represented appellant's wage-earning capacity and was suitable for his medical condition. In accordance with 5 U.S.C. §§ 8106 and 8115, the Office reduced appellant's compensation benefits to a new compensation rate of \$636.00 every four weeks.

By decision dated April 20, 2000, the Office finalized its preliminary determination, finding that appellant had received an overpayment of \$1,789.00 because he received compensation and he had returned to limited duty on September 11, 1999 but continued to receive compensation benefits for temporary total disability until November 6, 1999. The Office further found that appellant was with fault in the creation of this overpayment as he was reminded on November 17, 1998 that if he returned to work or worked for any period of time for which he was paid temporary total disability, he must return any checks received, but that he did not return the erroneously paid checks for the periods he worked. The Office determined that the overpayment would be recouped by withholding \$335.00 a month from appellant's continuing compensation benefits through December 30, 2000.³

The Board finds that the Office properly determined that an overpayment in the amount of \$1,789.00 would be collected by withholding \$335.00 a month from his continuing compensation benefits.

Section 10.441(a) of the Office's implementing regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.

The Office's regulations further provide that, if additional written information is not submitted or a precoupment hearing is not requested within 30 days of the Office's preliminary overpayment determination, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action.⁴ The Board notes that the overpaid individual has the responsibility for providing such financial information as the Office may require.⁵

² In response, in December 1999 appellant sent the Office a check for \$1,000.00 to be put towards repayment of the overpayment, however, as the evidence of this payment was not before the Office at the time of its most recent merit decision, it cannot now be considered by the Board on this appeal.

³ The repayment sheet EN-2224, which accompanied the April 20, 2000 decision containing the repayment details does not appear in the case record.

⁴ See *Fred A. Cooper, Jr.*, 44 ECAB 498 (1993).

⁵ *Id.*

In this case, appellant did not complete and return the Form OWCP-20 overpayment recovery questionnaire he was provided with the December 13, 1999 preliminary determination or provide any other financial or monthly expenses information to aid the Office in determining what rate of repayment would cause the least amount of hardship to appellant. The Office, therefore, properly made a determination of the amount of withholding from appellant's continuing compensation benefits based upon the existing evidence of record. The Office determined that, for prompt recovery of the \$1,789.00 overpayment, \$335.00 a month would be withheld from appellant's continuing compensation benefits until the overpayment is repaid.⁶

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 20, 2000 is hereby affirmed.

Dated, Washington, DC
May 24, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ The record before the Office at the time of its most recent decision lacked any evidence that appellant had made a lump sum payment in December 1999 and, therefore, such evidence of a \$1,000.00 payment made to the Office in December 1999 cannot now be considered by the Board on this appeal. However, appellant may request reconsideration of the repayment schedule by the Office and submit such evidence as would support a modification of the repayment schedule to give him credit for the \$1,000.00 already repaid.