

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURIE D. HEDGEBETH and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 02-1758; Submitted on the Record;
Issued November 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant was with fault in the matter of the overpayment that arose in her case; and if so, (2) whether the Office of Workers' Compensation Programs properly recovered the overpayment from appellant's schedule award.

On September 8, 1999 appellant, then a 29-year-old mailhandler/sack sorter, filed a claim for right carpal tunnel syndrome. The Office accepted her claim for right carpal tunnel syndrome and a right trapezoid strain. Appellant stopped working on December 6, 1999 and received compensation for temporary total disability on the periodic rolls.¹

Appellant was released to return to usual work effective January 4, 2000.² She continued to receive compensation for temporary total disability on the periodic rolls through June 17, 2000.

On April 3, 2001 the Office made a preliminary finding that an overpayment of \$10,251.10 occurred in appellant's case because she received compensation for wage loss after she resumed working for the employing establishment. The Office also made a preliminary determination that appellant was with fault in the matter because the evidence supported that she was reasonably aware that she should not have received this money. The Office noted that, evidence of record did not support appellant's contention that she believed the money she continued to receive was for a schedule award. The Office also noted appellant's statement that she had committed the funds "in ways which I would not have if I had not received the money."

¹ When the Office notified appellant on November 4, 1999 that it was accepting her claim, an attached guide for claimants ("addressing the most frequent problem areas and questions claimants have about their cases") advised that compensation is paid for periods of disability for work supported by medical evidence.

² The record indicates that she remained out of work for a condition unrelated to her job.

Appellant requested a prerecoupment hearing, which was held on October 23, 2001. She testified that she was aware that she continued to receive compensation while she was getting her paycheck. Appellant explained, however, that she thought the money was for a schedule award. She had not filed for a schedule award, but she already had surgery and knew how the process worked; she felt that she was entitled to one. Appellant argued that she did her part to let the Office know that she was released to return to work: “It was a mistake made without any error of my own.”

In a decision dated April 24, 2002, the hearing representative found that appellant was with fault in the matter of the overpayment. When the payments continued after January 4, 2000, the hearing representative explained, a prudent individual would have, at the very least, contacted the district Office and tried to determine whether or not these payments were correct. The hearing representative ordered that the overpayment be recovered, to the extent possible, from the schedule award appellant would receive.

On May 15, 2002 the Office issued a schedule award for a 5 percent permanent impairment to the right upper extremity, entitling appellant to 15.6 weeks of compensation. The Office noted, however, that the entire amount of the award was being applied to her overpayment in accordance with the hearing representative’s decision.

The Board finds that appellant was with fault in the matter of the overpayment that arose in her case.

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).³

Whether or not the Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.⁴

Appellant is with fault under the third criterion. After being released to return to work from her employment injury and while receiving wages from work, she accepted continuing compensation payments from the Office. Appellant should have known that she was not entitled

³ 20 C.F.R. § 10.433(a).

⁴ *Id.* at § 10.433(b).

to compensation for wage loss after being released to work with wages. She should have known that the compensation she accepted after January 4, 2000 was incorrect.

The Board has carefully reviewed the record in this case and finds that the evidence does not support appellant's contention that she believed the continuing compensation was for a schedule award. On February 29, 2000 almost two months after being released to work, appellant asked the Office for the first time whether it had requested an impairment rating from her doctor. She would not have made this inquiry if she believed she was already receiving a schedule award. Appellant did not file a claim for a schedule award until March 2, 2001. On March 6, 2000 the Office requested an impairment rating from her doctor and forwarded a copy of the request to appellant. The doctor did not evaluate appellant's impairment until March 24, 2000.

Appellant testified at the prerecoupment hearing that she had gone through the schedule award process before. She should have known, therefore, that an employee does not receive a schedule award without filing a claim for one and without being examined by a doctor to determine the percentage of impairment. By accepting compensation payments after January 4, 2000, she shares part of the responsibility for the overpayment. The fact that the Office may have erred in making the overpayment does not by itself relieve appellant from liability for repayment because she was also with fault in accepting the overpayment.⁵ Because appellant is with fault, the Office may not consider waiving the overpayment.

The Board also finds that the Office properly recovered the overpayment from appellant's schedule award.

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.⁶

The hearing representative noted that appellant would be receiving a schedule award for her employment injury and properly ordered that the overpayment be recovered by decreasing this later payment of compensation. Although recovery of the overpayment consumed the entire schedule award, no hardship resulted from the recovery because appellant had no wage loss and had already received 15.6 weeks of compensation (and more) in the form of overpaid compensation beginning January 4, 2000, which she kept. The net result, in effect, was that she received her schedule award early.

⁵ 20 C.F.R. § 10.435(a) (1999).

⁶ *Id.* at § 10.441(a).

The April 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 13, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member