

**United States Department of Labor
Employees' Compensation Appeals Board**

V.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 07-237
Issued: October 10, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 11, 2006 merit decision concerning an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received a \$3,230.24 overpayment of compensation; and (2) whether the Office properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby, precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On November 18, 1983 appellant, then a 29-year-old mail handler, sustained injury to his back when he lifted a mail sack. The Office accepted that he sustained a lumbar sprain and left

herniated nucleus pulposus at L4-5.¹ After a period of total disability, appellant returned to limited-duty work for the employing establishment in February 1984. He periodically stopped work and received compensation for partial and total disability.

In early 2006 appellant was receiving compensation for total disability. He retired from the employing establishment on disability retirement effective February 17, 2006 and he elected to receive retirement benefits from the Office of Personnel Management (OPM) effective April 1, 2006 instead of disability compensation from the Office.

The record contains June 22, 2006 documents entitled “worksheet” and “manual adjustment form” suggesting that appellant received \$3,281.21 in compensation for the period April 1 to June 10, 2006 that he was not entitled to receive.² On August 3, 2006 the Office advised appellant of its preliminary determination that he received a \$3,281.21 overpayment compensation for the period April 1 to June 10, 2006 because he continued to receive wage-loss benefits totaling that amount after he elected to receive OPM benefits effective April 1, 2006. The Office also made a preliminary determination that appellant was at fault in the creation of the overpayment, thereby, precluding waiver of recovery of the overpayment. In support of this finding, the Office stated, “You knew or reasonably should have known that you were not entitled to receive dual benefits during any period and should have returned payments received from [the Office] after your effective date of OPM benefits commencement.”³ The Office informed appellant that he should complete and return an attached financial information form (OWCP-20) even if he did not wish to contest the finding of fault.

In a Form OWCP-20 completed on August 27, 2006, appellant indicated that he and his wife had \$4,100.00 in monthly income. He listed about \$4,200.00 in monthly expenses which included \$1,671.00 for mortgage payments, \$550.00 for food, \$500.00 for clothes, \$700.00 for utilities, \$468.00 for his automobile loan and \$300.00 for miscellaneous expenses. Appellant stated that he had \$420.00 of assets comprised of \$120.00 in his checking account and \$300.00 in other personal property or funds. On the form, he asserted that he did know that he received any incorrect payments. Appellant indicated that he repeatedly advised the Office about issues regarding his election to receive OPM benefits effective April 1, 2006.

Appellant requested a telephone conference with the Office on the issues of fault and possible overpayment. The record contains a memorandum detailing the September 21, 2006 conference between appellant and an Office claims examiner, as well a worksheet of financial information discussed during the conference. Appellant claimed additional monthly expenses such as \$173.00 for automobile insurance, \$150.00 for gas, \$300.00 for unreimbursed medical expenses, \$25.00 for old medical bills and \$68.00 for credit card debt. He indicated that he

¹ The Office authorized surgical procedures at L4-5 which were performed in July 1986 and June 1998. The Office had previously accepted that appellant sustained thoracic and lumbar strains on February 12, 1981 and paid compensation for periods of disability.

² On the same date, the Office requested that OPM send a check for \$3,281.21. The record contains a July 13, 2006 letter indicating that appellant’s health benefits enrollment was transferred to OPM effective June 11, 2006.

³ The Office also indicated that appellant was at fault because he “should have returned to us any compensation checks received after April 1, 2006, the period his dual benefit began.”

owned a 1999 sports utility vehicle and his wife owned a 1998 sedan. The claims examiner completed a worksheet indicating that appellant had \$4,100.00 in monthly income, \$4,487.00 in monthly expenses, and \$11,195.00 in expenses comprised of \$120.00 for his checking account balance and \$11,075.00 for his second automobile.⁴ She provided appellant with 15 days to provide documentation supporting his claimed monthly expenses.

In a decision dated October 11, 2006, the Office finalized its preliminary determinations that appellant received a \$3,230.24 overpayment of compensation and that he was at fault in creating the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.⁵ The Office stated, “You knew or reasonably should have known that you were not entitled to receive benefits from both OPM and [the Office] and should have returned the duplicate payments to [the Office].”⁶

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Act⁷ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁸ Section 8129(a) of the Act provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁹

Section 8116(a) of the Act provides that while an employee is receiving compensation or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not

⁴ Appellant indicated his monthly income was \$1,098.00 and his wife’s was \$3,002.00. The claims examiner indicated that appellant’s reported monthly clothing expense seemed high and listed it as \$200.00 on her worksheet.

⁵ Section 8129(b) of the Federal Employees’ Compensation Act provides, “Adjustment 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 this subchapter or would be against equity and good conscience.” 5 U.S.C. § 8129(b).

⁶ The Office indicated that it did not receive any additional financial information within the allotted time. It stated that appellant had resources to repay the overpayment because he had \$11,075.00 in assets and determined that the overpayment should be recovered by deducting \$200.00 from appellant’s pay per month. However, as recovery from continuing compensation benefits under the Act is not involved in this case, the Board has no jurisdiction over the amount the Office determined that appellant should repay each month. *See Levon H. Knight*, 40 ECAB 658, 665 (1989).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8102(a).

⁹ 5 U.S.C. § 8129(a).

receive salary, pay or remuneration of any type from the United States, except in limited specified instances.¹⁰

In determining whether a claimant is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.¹¹ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”¹² These requirements are supported by Board precedent.¹³

ANALYSIS -- ISSUE 1

In its October 11, 2006 decision, the Office determined that appellant received a \$3,281.21 overpayment of compensation for the period April 1 to June 10, 2006 because he received wage-loss compensation totaling that amount after he elected to receive OPM benefits effective April 1, 2006. The Board finds that the Office has not adequately explained its basis for reaching this determination. The record contains June 22, 2006 documents entitled “worksheet” and “manual adjustment form” suggesting that appellant received \$3,281.21 in compensation for the period April 1 to June 10, 2006 that he was not entitled to receive. However, these documents, or any other documents in the record, do not provide evidence that payments were made to appellant totaling \$3,281.21. There is no indication in the record that payments were made on any given date. Nor is there any indication whether they were made through the sending of a paper check or through direct deposit into appellant’s bank account. In short, the evidence of record does not establish that appellant received \$3,281.21 in compensation for the period April 1 to June 10, 2006 that he was not entitled to receive.

In its October 11, 2006 decision, the Office also determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. However, the Office did not adequately explain its reasoning for this conclusion. It merely noted that appellant should have known that he could not receive both Office and OPM benefits after April 1, 2006. Additional explanation of this conclusion is especially necessary in the present case because the Office did not adequately explain when or how appellant received any incorrect payment.

As noted above, the Office is required by statute and regulation to make findings of fact.¹⁴ The Office’s October 11, 2006 decision does not contain findings and reasoning which would allow appellant to understand the precise defect of his claim and the kind of evidence

¹⁰ 5 U.S.C. § 8116(a).

¹¹ 5 U.S.C. § 8124(a) provides: “The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office “shall contain findings of fact and a statement of reasons.”

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

¹³ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

¹⁴ See *supra* notes 11 and 12 and accompanying text.

which would tend to overcome it. Therefore, the case should be remanded to the Office in order for it to produce a decision containing adequate findings and reasoning regarding appellant's overpayment. After such development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether the Office properly determined that appellant received a \$3,281.21 overpayment and whether the Office properly found he was at fault in the creation of the overpayment such that it was not subject to waiver. The case is remanded to the Office for further development to be followed by the issuance of an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 11, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: October 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board