



## **FACTUAL HISTORY**

On October 23, 2005 appellant, then a 25-year-old transportation security screener, filed a traumatic injury claim alleging that on that date, while loading a bag, he stepped incorrectly on his right foot and began to feel a sharp pain in his knee. He stopped work on October 24, 2005. By letter dated December 8, 2005, the Office accepted appellant's claim for right knee strain and right lateral collateral ligament. Appellant was referred for vocational rehabilitation services.

According to an Office internal note, on October 26, 2006 a representative from the Office spoke by telephone with Gwendolyn Stone at Consumer First Lending Group who indicated that appellant was working as a human resource specialist at Consumer First Lending Group in Sacramento. Ms. Stone indicated that appellant was working 40 hours per week at \$14.00 per hour. An Office telephone note dated October 26, 2006 indicated that appellant confirmed that he began work as a loan processor on October 16, 2006.

By letter dated November 1, 2006, the Office informed appellant that it was reducing his wage-loss benefits effective October 16, 2006 to reflect his actual earnings as a loan processor.

On November 1, 2006 the Office also issued a preliminary notice of overpayment in the amount of \$722.92 finding that appellant received compensation at the temporary total disability rate for the period October 16 through 28, 2006 while he was also working.<sup>1</sup> The Office made a preliminary finding that appellant was at fault in the creation of the overpayment as he should have been aware that he was not entitled to the higher compensation while working.

In a memorandum to file dated November 22, 2006, the claims examiner indicated that appellant had been paid under actual wage-earning capacity based on his employment beginning October 26, 2006. The memorandum noted that appellant had no actual earnings from such employment as he was working in an unpaid internship, so his benefits would not be reduced. In a November 22, 2006 letter, the Office informed appellant that, after a review of all available information, it had been determined that he was entitled to full compensation based on the fact that he currently had no wages. Full compensation was restored and the reduction in compensation referenced in a prior letter was rescinded.

On February 28, 2007 the Office issued a decision finding that an overpayment occurred in the amount of \$722.92 and that appellant was found to be with fault in the creation of the overpayment.

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<sup>1</sup> The overpayment was calculated by first determining that appellant was paid \$14.00 per hour or \$560.00 per week. The Office indicated that the gross amount of compensation appellant received from October 16 through 28, 2006 was \$821.51 and that the amount to which he was entitled during that period, based on appellant earning weekly wages of \$560.00, was \$98.59. Accordingly, the Office calculated that appellant received an overpayment in the amount of \$722.92 based on the difference between what he actually received for this period (\$821.51) and the amount that he was entitled to received (\$722.92).

### **LEGAL PRECEDENT**

Section 8129(a) of the Federal Employees' Compensation Act provides that an employee who is receiving compensation for an employment injury may not receive wages for the same period.<sup>2</sup>

### **ANALYSIS**

In the instant case, the Office found that appellant received an overpayment in the amount of \$722.92 because he received compensation for total disability during the period October 16 through 28, 2006 while he was also working. The Office based its conclusion on a mistaken fact that appellant was being paid wages of \$14.00 per hour for his work at Consumer First Lending Group. No proof of these wages exists other than notes regarding telephone calls between the Office and Consumer Lending. In fact, the Office later determined that appellant did not receive any wages for this period of time; rather, he was working as an unpaid intern. As appellant did not receive wages during the period of his unpaid internship, he did not receive any overpayment and the Office's finding to the contrary is in error. Accordingly, the Board will reverse the decision of the Office finding that an overpayment occurred.

### **CONCLUSION**

The Board finds that the Office erred in finding that appellant received an overpayment in the amount of \$722.92.<sup>3</sup>

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<sup>2</sup> 5 U.S.C. § 8129(a).

<sup>3</sup> In light of the disposition of the first issue, the second issue regarding fault is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 28, 2007 is reversed.

Issued: October 5, 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