

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

S.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 10-58
Issued: August 9, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 7, 2009 appellant filed a timely appeal from the September 14, 2009 merit decision of the Office of Workers' Compensation Programs finding she received an overpayment in the amount of \$706.20 and denying waiver. 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 an overpayment in the amount of \$706.20 from July 26 through August 1, 2009; and (2) whether the Office properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On October 7, 2005 appellant, a 42-year-old mail processor, sustained a right wrist injury while loading mail. The Office accepted her claim for right wrist sprain and strain. Appellant was off work on April 14, 2009, and received compensation benefits every four weeks in the net amount of \$2,824.79. At this time, her annual salary was \$52,526.00.

Appellant returned to work on July 25, 2009 to a limited-duty position in which she worked eight hours a day at an annual salary of \$52,526.00. On July 29, 2009 the Office notified appellant that she should return any wage-loss compensation paid following her return to work. The record reflects that a net check of \$2,824.79 was paid.

On August 4, 2009 the Office made a preliminary determination that appellant had been overpaid wage-loss compensation in the amount of \$706.20 after she had returned to work on July 25, 2009. It informed her that she was not at fault in the creation of the overpayment and was, therefore, eligible to receive a waiver of recovery of the overpayment. The Office explained the options for seeking a waiver. It asked appellant to submit an attached overpayment recovery questionnaire (Form OWCP-20), which would allow it to consider waiving the overpayment and determine, if necessary, a reasonable method for collection. The Office notified appellant that failure to submit the requested information within 30 days would result in a denial of waiver.

The record reflects appellant did not submit a completed overpayment recovery questionnaire.

By decision dated September 14, 2009, the Office found an overpayment had been created in the amount of \$706.20. It found that the overpayment could not be waived as appellant did not submit any financial information. The Office proposed that the overpayment be repaid by check or money order within 30 days of the date of its decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act 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 duty.¹ Section 8116 of the Act defines limitations on the right to receive compensation benefits. This section of the Act prohibits receipt of compensation for the same period of time for which salary is received.²

Compensation paid for total wage loss subsequent to the date of return to work should be declared an overpayment.³

ANALYSIS -- ISSUE 1

The record establishes that an overpayment was created when appellant returned to work on July 25, 2009, while remaining on the periodic rolls and receiving wage-loss compensation through August 1, 2009. When the Office learned that she had returned to work, it advised her, by means of a preliminary overpayment determination, that she was not entitled to compensation for the seven-day period from July 26 through August 1, 2009. Appellant's net compensation

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8106(a).

³ Federal (FECA) Procedure Manual, Part 2 – Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(b)(1) (July 1997).

rate every four weeks was \$2,824.79 or \$100.88 a day.⁴ Because she returned to work July 25, 2009, she was not entitled to wage-loss compensation for seven days and received an overpayment of \$706.20.⁵

The Board finds that the Office properly found that appellant received a \$706.20 overpayment for the seven-day period between July 26 and August 1, 2009.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the 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 the Act or would be against equity and good conscience.⁶ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁷

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.⁸

ANALYSIS -- ISSUE 2

The Office found that appellant was without fault in the creation of the overpayment. It requested that she submit financial evidence to support waiver. The Office provided a recovery questionnaire form and asked for financial documents to support her claimed income and expenses. It advised her to submit her response within 30 days.

The overpayment recovery questionnaire is designed to obtain the financial information required to determine whether adjustment or recovery would defeat the purpose of the Act. Appellant did not respond to the preliminary determination or return the overpayment recovery questionnaire provided by the Office. She did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act.

⁴ \$3,094.53 - \$221.44 - \$16.50 - \$31.80 = \$2,824.79.

⁵ (\$2,824.79/28) x 7 = \$706.20.

⁶ 5 U.S.C. § 8129(b).

⁷ *L.S.*, 59 ECAB ____ (Docket No. 07-1961, issued February 14, 2008).

⁸ 20 C.F.R. § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

Section 10.438 of the regulations state that a claimant who received an overpayment is responsible for providing information about income, expenses and assets to the Office so that it may determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.⁹ Failure to submit the information, which will also be used to determine a repayment schedule if necessary, within 30 days of a request from the Office, will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver will be considered until the information is submitted.¹⁰

On appeal, appellant contends that recovery of the overpayment would result in severe financial hardship, but as noted, she did not submit any response to the preliminary notice of overpayment. The failure to submit information does not establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.¹¹ The Board finds that the Office did not abuse its discretion in refusing to waive recovery of the overpayment.

CONCLUSION

The Board finds that the Office properly determined that appellant received a \$706.20 overpayment of compensation that occurred for the period July 26 through August 1, 2009. The Board also finds that the Office properly denied waiver of recovery.

⁹ *Id.* at § 10.438(a).

¹⁰ *Id.* at § 10.438(b); *Robert B. Hutchins*, 52 ECAB 344 (2001).

¹¹ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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