

¹ On November 1, 2006 the Office accepted that appellant, then a 49-year-old nixie clerk, sustained employment-related carpal tunnel syndrome. Appellant had a previously accepted claim for left shoulder strain and cervical disc herniation, adjudicated separately by the Office. On June 30, 1998 he was granted a schedule award for a 13 percent impairment of the left upper extremity under that claim. In a July 19, 2000 decision, the Board reversed a January 22, 1998 Office decision that found that his actual earnings as a modified mail processor fairly and reasonably represented his wage-earning capacity. Under the instant claim, on November 20, 2008, he was granted a schedule award for an additional 32 percent impairment of the left upper extremity.

On November 19, 2009 the Office issued a preliminary determination that an overpayment in compensation in the amount of \$10,323.31 was created because the employing establishment paid him administrative leave for the periods April 6 to 24, 2009 and June 1 to August 16, 2009 when he was also receiving wage-loss compensation from the Office. Appellant was found without fault. The November 19, 2009 preliminary determination stated that he could not have been aware or reasonably have been expected to know that the Office had paid compensation incorrectly. He was advised of his rights if he disagreed with the preliminary finding. On December 29, 2009 he requested a prerecoupment telephone conference that was held on March 19, 2010. The issues of amount, fault and recovery were discussed, and the amount of the overpayment was reduced to \$9,601.80 because the Office had included a week of compensation in which appellant was not paid administrative leave in calculating the overpayment. Appellant agreed to repay the overpayment in a lump sum. On March 19, 2010 the Office finalized the overpayment finding. The Office found appellant at fault, stating that it had been determined that the preliminary finding that he was at fault was correct, further explaining that this was because he received administrative pay from the employing establishment and compensation from the Office and he was aware he was not entitled to both for the same period. He was instructed to forward a check in the amount of \$9,601.80.²

The Board has duly considered the matter and finds that the case is not in posture for decision. While the record supports that appellant received an overpayment in compensation in the amount of \$9,601.80 because he received both wage-loss compensation and administrative pay from the employing establishment for the periods April 6 to 24, 2009 and June 1 to August 16, 2009,³ the Board finds that the fault finding requires further development. By its preliminary overpayment finding on November 19, 2009, the Office found appellant without fault, yet when issuing the final overpayment decision on March 19, 2010, the Office stated that it had determined that the preliminary finding was correct, yet found appellant at fault. The Board finds that, under these facts, appellant was not afforded sufficient due process on the issue of fault due to the conflicting evidence regarding the Office's finding of fault. He was not given a sufficient opportunity to submit evidence in this regard.⁴ The Board will therefore set aside the March 19, 2010 decision and remand the case to the Office to fully explain its determination as to whether appellant was at fault in the creation of the overpayment in compensation. Following this and such further development deemed necessary, the Office shall issue an appropriate decision.

² Appellant repaid the overpayment in full.

³ The record contains information from the employing establishment regarding appellant's administrative pay, and Office computer printouts showing that he received wage-loss compensation for the same period. (rd3/19/10) Section 8116(a) of the Federal Employees' Compensation Act states that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs, unless such benefits are payable for the same injury or the same death being compensated for under the Act. 5 U.S.C. § 8116(a).

⁴ See *Dorothy F. Ellis*, 41 ECAB 296, 300 (1989) (the Office erred by changing the grounds for its fault finding from the preliminary overpayment determination to the final overpayment decision. This denied appellant an opportunity to respond to the basis of the fault finding in the final overpayment decision).

IT IS HEREBY ORDERED THAT the March 19, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: April 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board