

On appeal appellant, through her attorney, contends that the Office did not meet its burden of proof in establishing the fact or amount of the overpayment and that the Office violated its procedures by failing to provide the calculations used to determine the fact and amount of the overpayment. The Office relied on a May 2008 spreadsheet prepared by the employing establishment, which used unexplained column headings and inaccurate time and

attendance data. For various dates between November 29, 1993 and February 28, 2000, the employing establishment entered work hours although it did not have time and attendance data. Further, in its decisions from 2002 through 2008, the Office had found variously that appellant was overpaid for 7,729 hours, 7,714 hours and 7,712 hours, demonstrating inconsistent calculations.

FACTUAL HISTORY

On January 20, 1984 appellant, then a 29-year-old position classification specialist, sustained a lumbosacral strain with two herniated discs requiring surgery in November 1985 and May 1990 for special fusions. She returned to work for four hours a day on February 10, 1992. On August 25, 1992 the Office issued a wage-earning capacity determination based on appellant's actual earnings working four hours a day. Appellant remained in the position until she retired effective September 30, 2005.

By preliminary determination dated November 25, 2002, the Office found a \$46,325.69 overpayment as appellant worked more than four hours a day for intermittent periods from April 5, 1992 to August 10, 2002, while receiving compensation for four hours a day. It set aside this determination on December 22, 2003 as there was insufficient information regarding fact and amount of the overpayment. In a January 12, 2004 letter, the Office requested that the employing establishment provide its payroll records. There was no response.

On June 23, 2004 the Office made a preliminary determination of a \$1,178.76 overpayment for the period April 5 to June 8, 1992 as appellant received compensation for four hours a day while working more than four hours a day. Following additional development, it issued a November 13, 2007 decision setting aside the June 23, 2004 preliminary decision and remanding the case for clarification of the fact and amount of the overpayment. In response, the employing establishment submitted a 300-page spreadsheet summarizing appellant's work hours, salary and compensation from April 1992 through August 2002. Column headings included "061," "Total Proof" and "Gross Proof." The employing establishment stated that it did not have time and attendance information for the following dates: November 29, 1993; May 2, 1994; May 15, 1995; March 16 and 30, 1998; March 29, April 26, May 24, October 11 and December 20, 1999; January 17 and 31 and February 28, 2000. The employing establishment entered estimated work hours for those dates. Several pages contain scattered dollar amounts and other entries with no column headings or other explanatory information.

On July 15, 2008 the Office issued a preliminary determination of a \$46,325.69 overpayment of compensation from April 5, 1992 to August 10, 2002 as appellant received disability compensation for 4 hours a day while working more than 4 hours a day, an excess of 7,729 hours. It found that she was at fault in creation of the overpayment. The Office did not provide the calculations on which it based its preliminary finding of overpayment.

By decision dated February 13, 2009, the Office finalized the July 15, 2008 determinations of fact, amount and fault.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act¹ 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 her duty.² Section 8129(a) of the Act provides, in pertinent part, that 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."³

Office procedures state that the preliminary notice of overpayment must clearly set forth the reason why the overpayment occurred and contain a clearly written explanation as to how the overpayment was calculated.⁴

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar injury in 1984 requiring two fusion surgeries. On February 10, 1992 appellant returned to work for four hours a day and received wage-loss compensation for four hours a day. She continued to work this schedule through August 2005.

In a July 15, 2008 preliminary notice finalized on February 13, 2009, the Office found that, from April 5, 1992 to August 10, 2002, appellant worked more than four hours a day for intermittent periods. Based on a May 2008 employing establishment spreadsheet, it found that she worked a total of 7,729 hours over her four-hour schedule, creating a \$46,325.69 overpayment of compensation for which she was at fault.

The Boards finds that the Office did not follow its procedures when it released the July 15, 2008 preliminary notice of overpayment as it did not provide a clearly written explanation of how the overpayment was calculated.⁵ It merely repeated the 7,729-hour total from the May 2008 spreadsheet. However, the spreadsheet is problematic as the employing establishment used nonstandard column headings, such as "061," "Gross Proof" and "Total Proof." There is no explanation of these terms. Therefore, the meaning of the information listed in those columns is unclear.

Moreover, several pages of the spreadsheet contain dollar amounts and other entries with no column headings or explanation. The significance of this data cannot be ascertained from the record. The Office did not provide any independent review of the employing establishment's

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8102(a).

³ *Id.* at § 8129(a).

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

⁵ Federal (FECA) Procedure Manual, *supra* note 4. *See also G.M.*, (Docket No. 06-1892, issued January 18, 2007); *D.M.*, (Docket No. 07-1434, issued December 14, 2007).

accounting methods or explain how it could accurately determine the amount of the overpayment based on unexplained, uncategorized spreadsheet entries.

Moreover, the spreadsheet also shows missing time and attendance information for dates between November 29, 1993 and February 28, 2000. The employing establishment provided estimated hours for these dates. The Office based its findings of fact and amount of overpayment, in part, on this estimated information rather than on accurate timekeeping records. The Board finds that the information of record relied on by the Office is incomplete as to the period or amount of the overpayment. The Board notes that on January 12, 2004 the Office requested that the employing establishment submit detailed records as to appellant's work. The employing establishment has not provided either the requested calculation or the payroll records.

On appeal, appellant, through her attorney, contends that the Office did not meet its burden of proof in establishing the fact or amount of the overpayment as the May 2008 spreadsheet was not fully explained and based on estimated or inaccurate time and attendance information. As noted, the Office failed to follow its procedures in calculating the overpayment and did not provide a clear explanation to appellant. The Board will reverse the February 13, 2009 decision regarding the fact and amount of overpayment. As the Office has not established an overpayment of compensation, the issue regarding fault is rendered moot.

CONCLUSION

The Board finds that the Office failed to establish the fact or amount of overpayment. It did not comply with its procedures by providing a detailed calculation of the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized February 13, 2009 is reversed.

Issued: December 4, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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