

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA F. MOORE and DEPARTMENT OF DEFENSE,
DECA SOUTHERN REGION COMMISSARY, Fort McClellan, Ala.

*Docket No. 97-1833; Submitted on the Record;
Issued January 13, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$277.20 on the grounds that appellant received duplicate compensation for the period April 14 through May 30, 1996; and (2) whether the Office properly determined that appellant was at fault in the creation of the overpayment.

On September 15, 1995 appellant, then a store worker, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 1995 she bruised her right hand when she hit the side of an ice machine while putting ice into buckets. Appellant stopped work on September 27, 1995 and returned to work on October 4, 1995.

The Office accepted appellant's claim for tendinitis of the right hand.

By letter dated February 28, 1997, the Office made a preliminary determination that an overpayment in compensation had occurred in the amount of \$277.20 during the period April 14 through May 30, 1996 because appellant had requested a replacement check which was issued on September 25, 1996 and that its records indicated that the original check dated August 2, 1996 was cashed at her bank with what appeared to be her signature on the back of the check. The Office advised appellant that she was at fault in the creation of the overpayment because she apparently cashed two checks for the same period. In addition, the Office advised appellant that she could request a telephone conference, a final decision based on the written evidence only, or a hearing within 30 days of the date of this letter if she disagreed that the overpayment occurred, if she disagreed with the amount of the overpayment, if she believed that the overpayment occurred through no fault of her own, and if she believed that recovery of the overpayment should be waived. The Office requested that appellant complete an attached overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof.

By decision dated April 24, 1997, the Office finalized its overpayment decision and finding of fault. In an accompanying memorandum dated April 25, 1997, the Office found that appellant had neither responded nor provided any evidence to permit a change in its finding of fault in the creation of the overpayment.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$277.20 on the grounds that appellant received duplicate compensation for the period April 14 through May 30, 1996.

In this case, the Office determined that appellant was entitled to compensation in the amount of \$277.20 which represented 28 hours of time lost from work during the period April 14 through May 30, 1996. The Office mailed a check dated August 2, 1996 to appellant in the amount of \$277.20. In response to appellant's telephone call on August 21, 1996 regarding her compensation check, the Office advised appellant by letter dated August 26, 1996 that a check was mailed to her for 28 hours of time loss from work during the period April 14 through May 30, 1996. The Office also advised appellant that the check was sent to her previous address. The Office then advised appellant that if she did not receive this check, then she should provide written notification so that the check could be reissued. In response to a telephone call with the Office on August 27, 1996, appellant advised the Office by letter dated September 10, 1996 that she never received the compensation check in the amount of \$277.20 and that she had moved from her previous address in June 1996. In a September 18, 1996 telephone call, the Office advised appellant that it would have to wait for the check to clear and/or receive her written statement indicating that she had not received her check. By letter dated September 19, 1996, the Office advised appellant that it had requested the Treasury Department to stop payment on the August 2, 1996 check. The Office further advised appellant to provide notification if she received or found the missing check. In a January 22, 1997 letter, the Office advised appellant to contact it regarding the replacement check that it issued upon her request on September 27, 1996. The Office then advised appellant that its records indicated that the original check issued on August 2, 1996 was cashed at South Trust Bank in Anniston, Alabama. The record reveals that the August 2, 1996 check was endorsed by appellant and processed by the bank on August 6, 1996. Inasmuch as it appears that appellant cashed the August 2, 1996 check for \$277.20, as well as the September 27, 1996 replacement check, an overpayment was created in the amount of \$277.20.

The Board further finds that the Office properly determined that appellant was at fault in the creation of the overpayment.

In determining whether an individual is "without fault," what constitutes "fault" is determined by section 10.320 of Title 20 of the federal regulations which states in pertinent part:

"(a) Although the Office may have been at fault in making the overpayment that fact does not relieve the overpaid individual ... from liability for repayment if such individual is not without fault.

"(b) With fault. In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education,

and physical and mental condition. An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have known to be material; or
- (3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.”¹

In this case, the Office applied the third standard -- appellant accepted a payment which she knew or should have known was incorrect -- in finding appellant to be at fault in the creation of the overpayment. After consideration of all the particular circumstances surrounding the overpayment, the Board finds that the facts of this case establish that appellant accepted a payment which she knew or should have been expected to know was incorrect. As noted above, appellant's signature appears on the back of the August 2, 1996 compensation check in the amount of \$277.20. Further, the check was processed by the bank on August 6, 1996. In addition, appellant cashed the September 27, 1996 replacement check. Appellant has not submitted any evidence establishing that she did not receive or cash the August 2, 1996 compensation check. Inasmuch as it appears that appellant cashed both compensation checks when she was only entitled to one payment, the Office properly determined that she was at fault in the creation of the overpayment. Therefore, the overpayment was not eligible for waiver.

With respect to the recovery of the overpayment, the Board notes its jurisdiction on appeal is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits under the Federal Employees' Compensation Act.² As appellant is no longer receiving wage-loss compensation benefits, the Board does not have jurisdiction with respect to the Office's recovery of the overpayment under the Debt Collection Act.

¹ 20 C.F.R. § 10.320(b).

² *Lewis George*, 45 ECAB 144 (1993).

The April 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 13, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member