

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURIE C. MAY and U.S. POSTAL SERVICE,
POST OFFICE, Nashua, NH

*Docket No. 01-905; Submitted on the Record;
Issued November 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$978.66 was created; and (2) whether the Office properly denied waiver on the grounds that appellant was at fault in creating the overpayment.

The Office accepted that appellant sustained right medial epicondylitis causally related to her federal employment. Appellant returned to a light-duty position and then stopped working on February 25, 2000.¹ She received severance pay for the two weeks following her work stoppage.

In a letter dated August 24, 2000, the Office advised appellant that a preliminary determination had been made that an overpayment of \$978.66 was created. The Office explained that the overpayment occurred because appellant had received both severance pay and compensation from February 26 to March 11, 2000. With respect to fault, the Office made a preliminary determination that appellant was at fault, because she knew or should have known that the compensation payment she received was incorrect.

In a decision dated January 9, 2001, the Office finalized the overpayment amount of \$978.66 and the determination that appellant was at fault and not entitled to waiver of the overpayment.

The Board finds that an overpayment of \$978.66 was created.

In this case, the record establishes, and appellant does not dispute, that she received two weeks of severance pay following her work stoppage on February 25, 2000. By payment dated April 14, 2000, appellant received compensation in the amount of \$3,052.28, covering the period February 26 to April 14, 2000. Appellant is not entitled to receive severance pay and

¹ The employing establishment personnel form stated that appellant declined an involuntary reassignment outside her commuting area.

compensation for the same period,² and therefore an overpayment of compensation was created. The Office determined that for the two-week period from February 26 to March 11, 2000, the amount of compensation paid was \$978.66.

The Board further finds that the Office properly denied waiver of the overpayment on the grounds that appellant was at fault in creating the overpayment.

Section 8129(b) of the Federal Employees' Compensation Act³ 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."⁴ Waiver of an overpayment is not permitted unless the claimant is "without fault" in creating the overpayment.⁵

On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: "(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect."

In a letter dated September 19, 2000, appellant explained that the severance payment was dated March 14, 2000, and that she received and deposited the severance payment on March 27, 2000. Appellant further stated, "So that I would not be overpaid by OWCP, I did not submit a CA-7 (claim for compensation) for the following two weeks which covered March 25 through April 7, [2000]." The record indicates that she had filed a CA-7 dated March 25, 2000 for the period March 11 to 24, 2000; on April 21, 2000 she submitted a CA-7 for the period commencing April 8, 2000. Appellant therefore has indicated that she was aware that she could not receive both severance pay and compensation for the same period; she attempted to avoid an overpayment by not claiming two weeks of compensation on her CA-7 claim forms.

Appellant has not, however, explained her acceptance of the April 14, 2000 compensation payment. The issue is whether appellant knew or should have known when she received the April 14, 2000 compensation payment that it was incorrect. Her September 19, 2000 statement indicates that she knew she could not receive severance pay and compensation for the same period. When she received a compensation payment indicating that it covered the period commencing February 26 to April 14, 2000, and she had already received severance pay from February 26 to March 11, 2000, she should have known that the compensation payment was incorrect. Under 20 C.F.R. § 10.433(a)(3), she has accepted a payment that she knew or should have known was incorrect. The Board finds that appellant is not "without fault" and therefore waiver of the overpayment is properly denied.

² See *Bonnye Matthews*, 45 ECAB 657, 668 (1994).

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8129(b).

⁵ *Norman F. Bligh*, 41 ECAB 230 (1989).

The decision of the Office of Workers' Compensation Programs dated January 9, 2001 is affirmed.⁶

Dated, Washington, DC
November 1, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ The record contains a February 14, 2001 overpayment decision regarding the time period March 12 to April 14, 2000. This decision was issued after appellant filed the current appeal, and is not before the Board on this appeal. The issues raised in that decision are distinct from the instant case and do not change the status of the current appeal. *See Douglas E. Billings*, 41 ECAB 880 (1990).