

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

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ANGELA SMITH ANDERSON, Appellant )

and )

U.S. POSTAL SERVICE, GENERAL MAIL )  
FACILITY, Houston, TX, Employer )

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**Docket No. 05-1849  
Issued: February 17, 2006**

*Appearances:*  
*Angela Smith Anderson, 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

**JURISDICTION**

On September 7, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated June 29, 2005 which found an overpayment occurred in the amount of \$7,996.08, for the period February 27, 2003 to February 21, 2004 and that she was at fault in the creation of the overpayment. Pursuant to 20 C.F.R. §§ 50.1(c) and 501.3, the Board has jurisdiction over these issues.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$7,996.08; and (2) whether she was at fault in the creation of the overpayment; thus, precluding waiver of recovery.

**FACTUAL HISTORY**

On July 6, 2000 appellant, a 39-year-old mail processor, filed a traumatic injury claim alleging that she injured her back on July 5, 2000 while in the performance of duty. The Office accepted the claim for dislocation of the lumbar spine at L4-5 and paid appropriate compensation. Appellant stopped work on July 7, 2000 and returned to a limited-duty job

working four hours per day on January 17, 2001 which was increased to six hours per day on April 11, 2001.

In an EN1049 form dated September 12, 2000, the Office advised appellant that she would continue to receive compensation payments every 28 days. The Office stated that, if she returned to work, she must notify the Office immediately. Appellant was also advised that even if she notified the Office of a return to work, if she received a payment that covered a period during which she had worked, she must return the payment to the Office. On September 15, 2000 she signed a certification that she had read the information contained in the Form EN1049 and understood the terms by which compensation was paid.

On February 28, 2003 appellant accepted a modified-job offer as a FTR mail processing clerk working eight hours per day. The job offer noted the effective date of the position as February 27, 2003.

The record indicates that appellant continued to receive compensation for wage loss for two hours per day after she returned to working eight hours per day effective March 1, 2003. She received payment of \$622.00 for the periods March 23 to April 19, 2003, April 20 to May 17, 2003, May 18 to June 14, 2003, June 15 to July 12, 2003, July 13 to August 9, 2003, August 10 to September 6, 2003, September 7 to October 4, 2003, October 5 to November 1, 2003, November 2 to 29, 2003, November 30 to December 27, 2003, December 28, 2003 to January 24, 2004 and January 25 to February 21, 2004, which resulted in \$7,464.00 for the period March 23, 2003 to February 21, 2004. Appellant also received a payment of \$607.00 for the period February 23 to March 22, 2003<sup>1</sup> and \$11.79 for a cost-of-living increase for the period March 1 to 22, 2003.

On March 10, 2004 the Office issued a loss of wage-earning capacity decision which found that appellant's actual earnings as a modified position of FTR mail processing clerk fairly and reasonably represented her wage-earning capacity and she had no loss of wages in the position. The Office noted that her employment in this position was effective March 1, 2003. In an attached calculation form, the Office noted that appellant began working eight hours per day on March 1, 2003.

In a letter dated March 12, 2004, the Office advised appellant of its preliminary determination that an overpayment of \$7,952.72, was created during the period March 1, 2003 to February 21, 2004, because she had returned to work eight hours a day but continued to receive compensation for two hours each day. The Office made a preliminary determination that appellant was at fault in the creation of the overpayment because she accepted payments she knew or should have known were incorrect. The Office noted that appellant failed to notify it that she had returned to work eight hours a day.

Appellant requested a precoupment hearing which was held on November 3, 2004. She contended that she was not at fault and she believed the compensation reflected an adjustment for her back pay due to incorrect payment of compensation when appellant increased her work

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<sup>1</sup> On the sheet the Office noted \$476.93 or the amount due for the period March 1 to 22, 2003. This amount was calculated by dividing \$607.00 by 28 and then multiplying by 22.

hours from four to six. Appellant stated that she began working eight hours a day on February 27, 2003. She also submitted an overpayment recovery questionnaire form detailing her expenses and income.

By decision dated June 29, 2005, the Office hearing representative finalized the overpayment determination and modified the amount of the overpayment to \$7,996.08. The hearing representative explained that appellant testified that she began to work eight hours per day effective February 27, 2003 and not March 1, 2003. She was found at fault in the creation of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 1**

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 her duty.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

The record establishes that appellant received an overpayment of compensation in the amount of \$7,996.08, for the period February 27, 2003 to February 21, 2004. The record establishes that she returned to work on February 27, 2003. On February 28, 2003 appellant accepted a modified-job offer which increased her hours to eight hours per day effective February 27, 2003. Furthermore, she states that she informed the Office that she returned to work eight hours a day on February 27, 2003. Based upon appellant's return to working eight hours a day, the Office issued a loss of wage-earning capacity effective March 1, 2003. On March 10, 2004 the Office determined that an error had occurred when appellant continued to receive compensation for two hours of wage loss after she had returned to work for eight hours per day on March 1, 2003. This created an overpayment in the amount of \$7,952.72, for her compensation benefits for two hours were paid until the error was corrected effective February 21, 2004. The Office determined that appellant was not entitled to receive the compensation payments for two hours per day as she returned to full-time work eight hours per day. The Office calculated the amount of the overpayment by determining that she received payments totaling \$7,952.72, from March 1, 2003 to February 21, 2004. However, the hearing representative properly modified the overpayment amount to \$7,996.08, to reflect the fact that appellant returned to work on February 27, 2003 and not March 1, 2003. The Board will affirm the Office hearing representative's June 29, 2005 decision regarding the fact and amount of the overpayment.<sup>3</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> The Board notes that as the amount of the overpayment modified by the Office hearing representative was not "significantly larger than that outlined in the preliminary decision" (\$7,996.08-\$7,952.72 = \$43.36), the hearing representative did not err when she did not return the case record to the district Office for a new preliminary determination. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4b.(2) (May 2004), which instructs the Office hearing representative to return the case record to the district Office in situations where the modified overpayment amount is "significantly larger" than the delineated in the preliminary determination.

## LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office unless 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.<sup>4</sup>

Section 10.433(a) of the Office's regulations provides:

“[The Office] may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from [the Office] are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault in creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (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 to be incorrect. (This provision applies only to the overpaid individual).”<sup>5</sup>

## ANALYSIS -- ISSUE 2

The Office applied the third standard in determining that appellant was at fault in creating the overpayment. In order for the Office to establish that she was at fault in creating the overpayment of compensation, it must establish that, at the time she received the compensation checks in question, she knew or should have known that the payments were incorrect.<sup>6</sup> In this case, appellant received partial disability payments for two hours a day as of February 27, 2003, although she had returned to work eight hours a day. She should not have been in receipt of compensation for partial disability. After her return to full-time work on February 27, 2003, appellant received compensation in the amount of \$7,996.08, an amount she knew or should have known to be incorrect.<sup>7</sup> Appellant contended that she thought the continuing payments were adjustments for incorrect payments she received when she increased her hours from four to six. However, the record contains no evidence that the Office advised appellant that she had not received correct payment when appellant increased her hours from four to six. On September 15, 2000 she signed a certification that she had read the information in the Form

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<sup>4</sup> 5 U.S.C. § 8129; *see Linda E. Padilla*, 45 ECAB 768 (1994).

<sup>5</sup> 20 C.F.R. § 10.433 (1999); *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

<sup>6</sup> *Lawrence J. Dubuque*, 55 ECAB \_\_\_\_ (Docket No. 04-437, issued August 26, 2004).

<sup>7</sup> *Duane C. Rawlings*, 55 ECAB \_\_\_\_ (Docket No. 02-2172, issued March 8, 2004). (Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits received.)

EN1049 and understood the terms under which she received compensation. The Board finds that appellant knew or should have known that she was not entitled to continuing compensation payments on and after February 27, 2003 as she had returned to full-time work eight hours per day. Therefore, she is not without fault in the creation of the overpayment and waiver of the overpayment is not possible.

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount to \$7,996.08, as found by its hearing representative, for the period February 27, 2003 to February 21, 2004, as she continued to receive compensation for partial disability after returning to work full time.

The Board further finds that the Office properly determined that appellant was at fault in the creation of the overpayment and that, therefore, the overpayment was ineligible for waiver.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 29, 2005 is affirmed.

Issued: February 17, 2006  
Washington, DC

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

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