

bilateral carpal tunnel syndrome and bilateral hand osteoarthritis as a result of his federal employment. By letter dated March 19, 2002, the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

On November 20, 2002 appellant filed a claim for a schedule award. By letter dated March 26, 2003, he requested that his schedule award payments be paid in a lump sum. By decision dated April 1, 2003, the Office issued a schedule award for a 12 percent impairment to appellant's left upper extremity and a 12 percent impairment of his right upper extremity. The Office calculated the number of weeks of compensation as 74.88 based on a weekly pay rate of \$661.34 and a weekly compensation rate of \$496.01. It noted that the period of the award was from August 5, 2002 to January 11, 2004. The Office noted that appellant was issued a check for \$16,297.47, to cover the period August 5, 2002 to March 22, 2003 and that checks would continue every four weeks in the amount of \$1,984.04, if applicable.

By letter dated April 1, 2003, the Office advised appellant that, if he wished a lump-sum payment, he should submit a signed statement indicating that he had returned to work or currently received income sufficient to meet his basic living expenses. The Office noted that schedule benefits were not a substitute for wages. Appellant responded by letter dated April 8, 2003, indicating that he wished to receive a lump-sum payment and that he was not dependent on this money for his basic living needs as he was currently working for the employing establishment. By letter dated April 23, 2003, the Office calculated appellant's lump-sum payment to be \$18,808.05. The Office noted that additional benefits which might be awarded at a later date for temporary total disability or loss of wage-earning capacity will not be considered in computing any lump-sum entitlement. The Office indicated that any lump-sum payment will represent full and final compensation payment for the period of the award even if appellant sustained recurrence of total disability. The Office asked him to sign an agreement if he wished to receive the lump-sum payments.

On May 16, 2003 the Office issued appellant a check in the amount of \$18,808.05, as a lump-sum payment for his schedule award.

By letter dated January 24, 2005, the Office informed appellant that it had made a preliminary determination that he had been overpaid in the amount of \$18,859.00. It noted that he continued to receive monthly compensation payments under the schedule award after receiving the lump-sum payment. The Office made a preliminary determination that appellant was at fault in accepting these payments in that he knew or should have known that he was not eligible for further compensation under the schedule award after receiving the lump-sum payment.

The Office submitted copies of cancelled checks that appellant received dated May 17, 2003 through January 16, 2004 for a total of \$18,859.59, for his schedule award claim.

On February 14, 2005 appellant requested a prerecoupment hearing on the issue of waiver of the overpayment. He indicated that on numerous occasions he requested a clarification of the amount and duration of the payments from the Office but, that he was never provided with this information. At the hearing held on October 18, 2005, appellant stated that the week after

receiving the first check after the lump-sum payment, he called the claims examiner and asked for a “clarification of the exact amount of money that I was to receive for each 12 percent impairment.” He talked to a claims examiner on at least “half a dozen times” and the claims examiner’s supervisor “a couple of times.” Appellant stated that neither of them ever clarified the payments. He indicated that he had no inkling that the payments he received were not legally and legitimately his. Appellant believed that the lump sum may have been payment for one arm and that the subsequent checks were for the other. He noted that he invested the lump-sum payment in a business that no longer existed.

Appellant submitted a financial form listing his monthly income as \$3,429.99 and his total monthly expenses as \$3,055.00. He lists his dependents as his wife and two sons and noted no other assets.

In a decision dated January 11, 2006, the hearing representative found that appellant was at fault in creating the overpayment as he knew or reasonably should have known that he was not entitled to any further “schedule award monies” following his receipt of the lump-sum payment. The hearing representative directed him to make payments of \$100.00 per month to repay the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8116(a) of the Federal Employees’ Compensation Act provides that an employee who receives continuing compensation or has paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payment would have continued, may not receive salary, pay or remuneration of any type from the United States.¹ It is a well-established principle that a claimant is not entitled to dual workers’ compensation benefits for the same injury.² With respect to benefits under the Act, the Board has held that an employee cannot concurrently receive compensation under a schedule award and compensation for disability for work.³

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation. Under the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Waiver of Recovery*, Chapter 2.808.5(a)(3) (March 1995), a schedule award for one injury may be paid concurrently with wage loss for another injury only if the injuries are not to the same part of the body. The record reflects that appellant received a lump-sum payment under the April 1, 2003 schedule award for a 12 percent impairment to the left upper extremity and a 12 percent impairment of the right upper extremity arising from his injury. The period of the award was from August 5, 2002 to January 11, 2004, a total of 74.88 weeks of compensation. Appellant

¹ 5 U.S.C. § 8116(a); *see also* 20 C.F.R. § 10.400(b) and *Dale Mackelprang*, 56 ECAB__ (Docket No. 05-1401, issued October 24, 2005).

² *James A. Earle*, 51 ECAB 567, 568 (2000); *Robin O. Porter*, 40 ECAB 421 (1989).

³ *Id.*; *see also Andrew B. Poe*, 27 ECAB 510, 512 (1976).

requested a lump-sum payment which was subsequently made by the Office. He accepted the lump-sum payment but also continued to receive monthly compensation under the schedule award in the amount of \$496.01 per week or \$1,984.04 per every four week. Appellant received a total amount of \$18,859.59. Since he was not entitled to dual payments, the schedule award compensation paid after the date of the lump-sum payment, totaling \$18,859.59, created an overpayment of compensation. The Board finds, therefore, that the fact of overpayment is established in this case.

LEGAL PRECEDENT -- ISSUE 2

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.⁴ No waiver of an overpayment is possible if the claimant is not without fault in helping to create an overpayment.

In determining whether an individual is not without fault or, alternatively, with fault, section 10.320 of Title 20 of the Code of Federal Regulations states in pertinent part:

“An individual is with fault in the creation of the 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 know 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.⁵

ANALYSIS -- ISSUE 2

The hearing representative evaluated appellant’s testimony and the record and determined that appellant was not without fault in receiving the overpayment for the third reason, *i.e.*, he accepted a payment that he knew or should have been expected to know was incorrect. The Board finds that the record supports that appellant was at fault in the creation of the overpayment. The Office issued a schedule award on April 1, 2003 for a 12 percent impairment of the upper right extremity and a 12 percent impairment of the left upper extremity. The Office calculated the weeks of compensation as 74.88 and noted that the award would be from August 5, 2002 to January 11, 2004. Appellant would receive a check in the amount of \$16,297.47 for the period August 5, 2002 to March 22, 2003 and that payments would continue in the amount of \$1,984.04 every four weeks. However, he elected to receive a lump-sum payment instead of periodic payments. The Office clearly informed appellant that the lump-sum payment would represent his full and final compensation under the schedule award. The

⁴ 20 C.F.R. § 10.433(a).

⁵ 20 C.F.R. § 10.320.

decision clearly listed the period of the schedule award. However, the Office continued to make payments every four weeks. Appellant knew or should have known that he was in receipt of compensation to which he was not entitled. There is no record other than his testimony that he attempted to get the Office to clarify the amount of the payments. Appellant accepted these monthly payments after he received the lump-sum payment, checks that he knew or should have known were incorrect. Even though the Office erred in continuing to send him compensation checks after he received the lump-sum payment, this does not excuse his fault in accepting compensation payments he knew or should have known to be incorrect.⁶ Accordingly, the Office properly found appellant to be not without fault in creating the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of the Act provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled.⁷ However, where no further compensation benefits are due to an individual, the Board does not have jurisdiction and the recovery of an overpayment remains within the discretion of the Office. The Board's jurisdiction over recovery is limited to review of those cases where the Office seeks recovery from continuing compensation under the Act.⁸

ANALYSIS -- ISSUE 3

With respect to the recovery of the overpayment, the Board notes that its jurisdiction is limited to review of those cases where the Office seeks recovery from continuing compensation benefits under the Act.⁹ As appellant was no longer receiving compensation benefits at the time of the January 11, 2006 decision, the Board lacks jurisdiction to review the recovery of the overpayment.

CONCLUSION

The Office properly found that appellant received an overpayment in the amount of \$18,859.59 and that he was not without fault in the creation of the overpayment and therefore not entitled to waiver. The Board does not have jurisdiction to review the rate set by the Office for recovery of the overpayment.

⁶ *Lynden F. Moser*, 37 ECAB 725 (1986).

⁷ 5 U.S.C. § 8129(a).

⁸ *Terry A. Keister*, 56 ECAB ____ (Docket No. 04-1136, issued May 23, 2005); *see also Albert Pineiro*, 51 ECAB 310 (2000).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2006 is affirmed.

Issued: June 27, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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