United States Department of Labor
Employees' Compensation Appeals Board

N.A., Appellant	)	
and	)	**Docket No. 06-586**
	)	**Issued: March 7, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Tyler, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 17, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs hearing representative dated October 13, 2005 wherein the Office hearing representative determined that an overpayment occurred in the amount of $6,057.26 and that waiver was not warranted. Pursuant to 20 C.F.R. §§ 501.2(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 $6,057.26; and (2) whether the Office properly denied waiver of the recovery.

FACTUAL HISTORY

On April 17, 1991 appellant, then a 44-year-old machine operator, filed an occupational disease claim alleging numbness in her hand and pain in her neck and shoulders while in the performance of duty. The Office accepted the claim for tenosynovitis of the right shoulder. Appropriate compensation benefits were paid. On July 29, 1993 appellant filed an occupational

disease claim for an upper extremity condition sustained in the performance of duty. The Office accepted the claim for bilateral carpal tunnel syndrome and bilateral shoulder strains.

Appellant stopped work on September 20, 1993 and was placed on the periodic rolls. On January 4, 1994 she underwent exploration of the left median nerve at the wrist with neurolysis and decompression of the carpal tunnel.

On May 30, 1995 the Office granted a schedule award for 28 percent impairment of the right upper extremity and 20 percent impairment of the left upper extremity. The Office advised appellant that the period October 13, 1994 through May 27, 1995 was being converted from compensation to schedule award payments. She received disability retirement benefits effective February 1995. Appellant's compensation benefits for total disability were reinstated following the expiration of the award in August 1997. She returned to limited-duty work on November 8, 1997.

On November 8, 2000 appellant filed a CA-7 form, claim for compensation for the period July 3, 2000 into the future. The employing establishment advised the Office that her pay rate was $19.16 per hour with $26.94 in night differential per week.

Appellant began working four hours per day on January 13, 2001.

On March 9, 2001 appellant filed a claim for compensation for the period July 3, 2000 through January 12, 2001. She filed subsequent claims for compensation for the periods January 13 to June 29, June 16 through September 7 and September 10 through October 26, 2001. Appellant claimed compensation for the four hours per day in which she was not working.

On December 12, 2001 the Office notified appellant that she was issued a $769.23 check for lost wages for the period January 13 through 26, 2001. The Office advised her that on December 17, 2001 another check would be issued for the CA-7 forms that she had filed for the period March 26 through June 14, 2001. The Office did not advise appellant of the amount, but advised her that she would receive compensation for 151 hours for the period March 26 through June 14, 2001.

By letter dated April 10, 2002, the employing establishment notified the Office that it had erroneously calculated appellant's pay rate and, therefore, an overpayment resulted. The employing establishment explained that she had an hourly pay rate of $19.16 plus a $26.94 night differential. The employing establishment indicated that appellant's weekly rate should be $793.34 instead of the $1,139.60 per week previously indicated. The employing establishment indicated that she was aware of the overpayment and consented to have the employing establishment deduct her overpayment.

In an overpayment worksheet dated June 24, 2002, the Office noted that appellant was paid at the wrong pay rate. The Office indicated that she was paid at the rate of $1,139.60 instead of the actual rate of $793.34. The Office determined that appellant received four checks in the amount of $11,431.61, $769.23, $4,508.54 and $3,226.49. The check which she received in the amount of $4,508.24 reflected the period June 18 to September 7, 2001. Additionally, the Office explained that these checks represented 933 hours for the period July 3, 2000 to

June 15, 2001. The Office determined that appellant received $19,935.87, for the aforementioned period when she should have received $13,878.61,[1] which resulted in an overpayment of $6,057.26.

On June 24, 2002 the Office made a preliminary finding that an overpayment of $6,057.26, arose because appellant received payments greater than her usual payments due to an incorrect weekly pay rate.[2] The Office found that she was at fault in the creation of the overpayment. Appellant was informed of her right to challenge the amount of the overpayment or request a waiver of the overpayment. If she wished a waiver of the overpayment, she was directed to submit financial information by completing an overpayment recovery questionnaire. No response was received.

In a decision dated July 26, 2002, the Office finalized its preliminary findings on the fact and amount of the overpayment. It found that appellant was at fault because she accepted and kept payments which she knew or should have been expected to know were incorrect. The Office noted that she was no longer receiving compensation and requested that she forward a check in the amount of $6,057.26.[3]

On July 23, 2002 appellant requested a hearing, which was finally held on July 14, 2005.[4] During the hearing she described how she believed an overpayment occurred. Beginning July 3, 2000 she was off work for one week and then began working four hours per day. However, appellant's first check was not received until May 2001. She explained that her first check covered the period July 3, 2000 through January 12, 2001. Appellant alleged that her compensation benefits statement arrived after the check, but she did not know how to read it. She alleged that she brought it to the union steward and subsequently met with the injury compensation specialist to determine why her payments were delayed. Appellant believed her check was correct because it had been nine months since she was paid. She explained that $11,000.00 seemed reasonable for nine months as she made approximately $30,000.00 a year and it appeared to be 75 percent to her. Appellant also testified that she received a second check for $769.23, a check for $3,226.49 and a check for $4,508.00. She alleged that the benefits statements had the same information as the previous ones and, therefore, she did not question them. Appellant stated that she never received a response from the Office and she assumed the payments were correct. She did not dispute that an overpayment existed, but explained that she did not understand how it was. The Office hearing representative explained that the overpayment occurred because the employing establishment provided the Office with incorrect

[1] A March 28, 2002 computer worksheet also reflected the $13,878.61 figure for 933 hours from July 3, 2000 to June 15, 2001.

[2] In a June 21, 2002 memorandum, the Office indicated that appellant was paid at the incorrect rate of pay from July 3, 2000 through June 15, 2001.

[3] In a separate letter dated July 26, 2002, the Office requested verification from the employing establishment regarding appellant's wages. The employing establishment subsequently advised the Office that appellant's annual salary was $41,991.00. They also noted that her gross weekly salary was $1,615.04 per week and that she was working 4 hours per day.

[4] A previously scheduled hearing set for August 11, 2004 was rescheduled because appellant had surgery and was unable to attend the hearing.

information regarding appellant's pay rate and that the actual date for the overpayment period was July 3, 2000 through September 7, 2001. Appellant described her income and expenses during the hearing. She testified that she initially paid $1,600.00 to a collection agency on April 23, 2002 through a telephone draft from her father-in-law's account and made a second payment of $5,367.40 by check. However, she testified that the collection agency obtained a second draft, which was not authorized, in the amount of $5,367.40 from her father-in-law's account. Appellant provided copies of the checks that she used to repay the Office in the amounts of $1,600.00, $5,367.40 and $5,367.40.

In memoranda dated July 12 and September 9, 2004, the Office indicated that the overpayment had been collected in full and that the Office owed appellant $4,879.35 due to an overage.

By decision dated October 13, 2005, the Office hearing representative affirmed the Office's June 24, 2002 decision modified to find that she was without fault in the creation of the overpayment. The Office hearing representative found that appellant submitted documentation to show that she repaid $12,234.80, through two bank drafts and a personal check. She also noted that the Office's data base showed that $11,207.41 was submitted on appellant's behalf by the employing establishment. The Office hearing representative concluded that an overpayment in the amount of $6,056.27,[5] had occurred and that appellant was entitled to a refund. Regarding waiver, she advised that the overpayment was collected in full and that appellant did not qualify for a waiver because her monthly income exceeded her ordinary and necessary living expenses. The Office hearing representative explained that appellant's monthly household income, based upon her testimony was equal to $5,132.67. Appellant also indicated that the ordinary and necessary monthly living expenses were equal to $1,524.16. The Office hearing representative concluded that appellant's monthly income exceeded her estimated ordinary and necessary living expenses and concluded that appellant did not qualify for a waiver. She also instructed the Office to issue a refund.

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 his duty.[6] When an overpayment has been made to an individual 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 the individual is entitled.[7]

[5] In addressing the overpayment, the hearing representative stated that stated that appellant was paid for 933 hours of leave without pay from July 3, 2000 to September 7, 2001.

[6] 5 U.S.C. § 8102(a).

[7] *Id*. at § 8129(a).

A final decision of the Office shall contain findings of fact and a statement of reasons.[8] With respect to overpayment decisions, the Office must provide clear statements showing how the overpayment was calculated.[9]

ANALYSIS -- ISSUE 1

The Board notes that the record is unclear with regard to how the fact and amount of the overpayment was determined.

The record is undisputed that appellant was paid at the incorrect pay rate. The employing establishment informed the Office on April 10, 2002 that, while it had provided accurate information regarding her weekly pay rate, the Office had erroneously calculated appellant's pay rate. The employing establishment confirmed that compensation was paid to her at an erroneous rate of $1,139.60, per week instead of her actual pay rate of $793.34, per week and provided documentation. The employing establishment noted that appellant's actual wage was an hourly rate of $19.16, plus a $26.94 night differential.

However, the record is not clear as to how the Office determined the amount of $6,057.26. In order to confirm the amount of the overpayment, the record should establish the specific compensation payments that were made, the date issued and the period covered by the specific compensation payments. The Board notes that the Office did not list the period of the overpayment or explain how the amount was calculated. In a June 24, 2002 worksheet, it indicated that appellant received four checks in the amount of $11,431.61, $769.23, $4,508.54 and $3,226.49, which totaled $19,935.87, covering 933 hours for the period June 3, 2000 to June 15, 2001. However, in the same worksheet, the Office indicated that the $4,508.54 check covered the period June 18 to September 7, 2001. A March 28, 2002 computer worksheet indicates that appellant was entitled to $13,878.61, for 933 hours from July 3, 2000 to June 15, 2001 and does not reference any subsequent period.[10] The Office hearing representative, in affirming the fact and amount of the overpayment, indicated that appellant was paid for 933 hours of leave without pay July 3, 2000 to September 7, 2001. This inconsistency in the period of the overpayment and the amount is not explained. The Board notes that it is unable to determine from the record whether the Office correctly calculated the amount of the overpayment and the precise period in which the overpayment was created. It is necessary that the Office make findings of fact including a clear explanation of how the fact and the amount of overpayment was determined.[11]

In her appeal, appellant indicated that she did not contest that an overpayment occurred but did not understand how it was calculated. The Board finds that the Office has not established how the amount of $6,057.26 was determined. As the Office has not clearly explained how the

[8] 20 C.F.R. § 10.126; *Teresa A. Ripley*, 56 ECAB ___ (Docket No. 05-189, issued May 9, 2005).

[9] *James Tackett,* 54 ECAB 611 (2003); *Sandra K. Kneill,* 40 ECAB 924 (1989).

[10] The Office arrived at the $6,057.26 overpayment amount by subtracting $13,878.61 from $19,935.87.

[11] *See Allen Kennedy*, 49 ECAB 276 (1998).

overpayment was calculated and the precise period in which the overpayment occurred, the Board will set aside the October 13, 2005 decision on the amount of the overpayment.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2005 decision of the Office of Workers' Compensation Programs hearing representative be set aside. The case is remanded for further proceedings consistent with this decision.

Issued: March 7, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board