

thumb when her chair rolled away before she had completely stood up. The Office accepted the claim for left knee sprain and aggravation of left knee osteoarthritis and authorized left knee replacement surgery, which occurred on January 14, 2003. Appellant filed a claim for compensation on May 20, 2003 requesting compensation for leave without pay from April 1 to May 19, 2003. For the period in question, she requested 17 hours of leave without pay on the time analysis form.

In a letter dated April 22, 2003, the employing establishment notified the Office that appellant had returned to work for four hours per day on April 1, 2003, but did not work at all on April 3, 2003. It noted that she received compensation pay for 20 hours, which she had worked.

On April 11, 2007 the Office made a preliminary determination that appellant was overpaid in the amount of \$298.59 for the period April 1 to 7, 2003. The Office stated that she was at fault in the creation of the overpayment as she accepted a payment which she knew or reasonably should have known was incorrect. The Office noted that appellant returned to work for five hours per day on April 1, 2003 and that a recurrence to total disability beginning April 8, 2003 had been accepted. The Office found that she was overpaid for the period April 1 to 7, 2003 in the amount of \$298.59. The Office found that appellant was at fault as she had accepted a payment she knew or should have known she was not entitled to. She did not respond.

By decision dated June 13, 2007, the Office finalized the preliminary overpayment determination, finding that there was an overpayment in the amount of \$298.59 and that as appellant was not entitled to waiver of the recovery of the overpayment, she was found to be with fault in the creation of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act¹ provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. Section 8106(a) provides in pertinent part as follows:

“If the disability is partial, the Unites States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.”²

The Act further provides that an employee who is receiving compensation for an employment injury may not receive wages for the same time period.³ Section 8129(a) of the Act

¹ 5 U.S.C. §§ 8101-8193, 8102(a).

² 5 U.S.C. § 8106(a).

³ 5 U.S.C. § 8116(a).

provides that when an overpayment has been made to an employee because of an error of fact or law, adjustment shall be made by decreasing later payments to which she is entitled.⁴

In determining whether a claimant is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.⁵ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.⁶ These requirements are supported by Board precedent.⁷

ANALYSIS -- ISSUE 1

In its June 13, 2007 decision, the Office determined that appellant received a \$298.59 overpayment of compensation for the period April 1 to 7, 2003 because she received wage-loss compensation after she had returned to work part time. The Board finds that the Office has not adequately explained its basis for reaching this determination. The record contains no worksheets or any other form suggesting that appellant received \$298.59 in compensation for the period April 1 to 7, 2003 that she was not entitled to receive. Furthermore, there is no indication in the record that payments were made on any given date. There is no evidence that the Office placed appellant on the periodic rolls for temporary total disability or that she received payments for wage-loss compensation. There is no indication whether a payment was made through the sending of a paper check or through direct deposit into appellant's bank account. The record shows she submitted a claim for compensation on May 20, 2003 requesting compensation for leave without pay from April 1 to May 19, 2003. For the period April 1 to 7, 2003, appellant requested 17 hours of leave without pay on the time analysis form. The evidence of record does not establish that she received \$298.59 in compensation for the period April 1 to 7, 2003 that she was not entitled to receive.

In its June 13, 2007 decision, the Office also determined that appellant was at fault in the creation of the overpayment, thereby, precluding waiver of recovery of the overpayment. However, the Office did not adequately explain its reasoning for this determination. It merely noted that appellant should have known that she could not receive compensation for wage loss when she had returned to work on April 1, 2003. The Office did not adequately explain when or how she received any incorrect payment.

As noted above, the Office is required by statute and regulation to make findings of fact.⁸ The Office's June 13, 2007 decision does not contain findings and reasoning which would allow

⁴ 5 U.S.C. § 8129(a).

⁵ 5 U.S.C. § 8124(a) provides: The Office shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office shall contain findings of fact and a statement of reasons.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997). See also Paul M. Colosi, 56 ECAB 294 (2005).

⁷ See James D. Boller, Jr., 12 ECAB 45, 46 (1960).

⁸ See *supra* notes 5 and 6 and accompanying text.

appellant to understand the precise defect of her claim and the kind of evidence which would tend to overcome it. Therefore, the case should be remanded to the Office in order for it to produce a decision containing adequate findings and reasoning regarding appellant's overpayment. After such development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether the Office properly determined that appellant received a \$298.69 overpayment and whether the Office properly found that she was at fault in the creation of the overpayment such that it was not subject to waiver. The case is remanded to the Office for further development to be followed by the issuance of an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: February 19, 2008
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