

FACTUAL HISTORY

This case has previously been before the Board. By decision dated June 21, 1996, the Board affirmed an April 7, 1994 Office decision that found that the selected position of carwash attendant fairly and reasonably represented appellant's wage-earning capacity.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

Appellant remained on the periodic rolls, and in an undated letter, received by the Office on February 14, 2007, advised that his compensation check for January 2007 was missing. He stated that he had moved "out of my last address" to 2428 Alameda Street in Vallejo, California. Appellant stated that he had informed the post office around January 1, 2007 and was now informing the Office.² In an April 2, 2007 letter, the Office advised him that tracers were placed for checks dated January 20, February 17 and March 17, 2007 and replacements were authorized for the three checks. It stated, "If any of the missing checks show up, you must return them to this office. If you negotiate them, you will be at fault in creating an overpayment." The record contains copies of checks for \$778.00 dated January 20, February 17 and March 17, 2007, covering the period December 24, 2006 to March 17, 2007. Each was mailed to 320 East Tabor Street, Apartment 31, Fairfield, California and endorsed with signatures purporting to be appellant's. A replacement check in the amount of \$2,334.00 was mailed to appellant at 2423 Alameda Street, Vallejo, California, on April 6, 2007 to cover the period December 24, 2006 to March 17, 2007. By letter dated September 11, 2007, the Office provided appellant with copies of the negotiated checks. Appellant was asked to examine them, and if the signatures were not his, did he recognize them.

On April 9, 2008 the Office issued a preliminary determination that an overpayment of compensation in the amount of \$2,334.00 had been created because appellant was paid twice for the period December 24, 2006 to March 17, 2007. It found appellant at fault because he was informed on April 2, 2007 that he would be at fault if the missing checks were negotiated. Appellant had not responded to the September 11, 2007 letter. He was provided an overpayment questionnaire and instructed regarding the preliminary finding. Appellant was given 30 days to respond. On May 8, 2008 the Office finalized the overpayment and requested repayment in full. By letter dated June 18, 2008, it informed appellant that, since he had not responded to the overpayment decision requesting repayment in full, the sum of \$194.50 would be withheld from his continuing compensation payments, effective July 5, 2008.³

¹ Docket No. 94-1823 (issued June 21, 1996).

² Appellant had moved numerous times. In December 2002, he informed the Office that he had moved from 434 Wilshire Avenue, Vallejo California to 752 Sunset Avenue #8, Suisun, California. In August 8, 2003, appellant informed the Office that he had moved from Suisun to 1100 Farmington Drive #162, Vacaville, California, in February 2005 from Vacaville to 433 Admiral Callaghan Lane, Vallejo, California, and in December 2005 to 320 East Tabor Street #31, Fairfield, California.

³ On June 9, 2008 the Office proposed to suspend appellant's compensation benefits because he failed to appear for a scheduled medical examination. On June 10, 2008 it adjusted appellant's compensation from the 75 percent augmented rate of 66 2/3 percent rate because he had no eligible dependents. By decision dated July 31, 2008, the Office finalized the proposed suspension. In a letter received August 22, 2008, appellant requested reconsideration of the July 31, 2008 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of the Federal Employees' Compensation Act⁴ 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 duty.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that an overpayment in compensation in the amount of \$2,334.00 was created. The record reflects that the Office issued three checks for \$778.00 each on January 20, February 17 and March 17, 2007. After appellant's report that he did not receive the compensation checks, a replacement check in the amount of \$2,334.00 was issued. By letter dated April 2, 2007, the Office informed appellant that tracers would be put on the January, February and March checks. If any of the missing checks showed up, he must return them to the Office and, if negotiated, he would be at fault in creating an overpayment. Each of the January, February and March compensation checks was endorsed with appellant's name. By letter dated September 11, 2007, the Office provided appellant with copies of the negotiated checks and asked him to examine them and address whether the signatures were not his and to indicate whether he recognized them. Appellant did not respond to this letter or to the preliminary overpayment determination dated April 9, 2008.

On appeal appellant asserts that he was imprisoned during the period the checks were sent and that his brother conducted his business. However, he did not adequately explain his endorsement of the compensation checks. The Board finds that an overpayment in compensation in the amount of \$2,334.00 was created.

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."⁷

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

"[M]ay 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8129; *see Joan Ross*, 57 ECAB 694 (2006).

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).⁸

In determining whether a claimant is at fault in creating an overpayment, the Office will consider the circumstances surrounding the overpayment. The degree of care expected by a recipient of compensation may vary with the complexity of the circumstances and the individual's capacity to realize that he or she is being overpaid.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the overpayment as he accepted a payment which he knew or should have known was incorrect. By letter dated April 2, 2007, the Office informed appellant that he would be at fault if the missing checks were negotiated. The record reflects that each check was endorsed with his name. As noted, appellant did not respond to the Office's September 11, 2007 letter in which he was provided copies of the negotiated checks and asked to respond about the endorsing signatures. He knew or should have known that he accepted payments by replacement check that was incorrect. Appellant's argument that the checks were stolen is not persuasive. The Board finds appellant was at fault in the creation of the overpayment.¹⁰ Therefore, the overpayment may not be waived.¹¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of the Office's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of

⁸ 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

⁹ 20 C.F.R. § 10.433(b); *see Neill D. Dewald*, 57 ECAB 451 (2006).

¹⁰ *See Ricky Greenwood*, 57 ECAB 462 (2006).

¹¹ *Tammy Craven*, 57 ECAB 689 (2006).

compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.¹²

ANALYSIS -- ISSUE 3

Appellant did not submit an overpayment recovery questionnaire or other financial information that the Office requested prior to the final May 8, 2008 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.¹³ When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁴ As appellant did not submit financial information as requested, the Board finds that there is no evidence of record to show that the Office erred in directing recovery at a rate of \$194.00 each compensation period.

CONCLUSION

The Board finds that an overpayment of \$2,334.00 occurred because appellant received duplicate wage-loss compensation payments. The Board further finds that the Office properly found appellant at fault and did not abuse its discretion in requiring repayment of the overpayment at the rate of \$194.00 each compensation period.¹⁵

¹² 20 C.F.R. § 10.441; see *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

¹³ 20 C.F.R. § 10.438.

¹⁴ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).

¹⁵ The Board also notes that section 8148(b) of the Act provides that benefits of beneficiaries imprisoned as a result of felony conviction shall be suspended as of the date of imprisonment. *Danny E. Haley*, 56 ECAB 393 (2005). In his appeal to the Board, appellant indicated that he was imprisoned from December 2006 to June 2008. There is, however, no evidence of record to show whether this was a felony conviction.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 8, 2008, as modified on June 18, 2008, be affirmed.

Issued: April 3, 2009
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