

On February 24, 2004 appellant, then a 38-year-old letter carrier, sustained an injury to her left leg and knee while bending down to pick up a tub of mail. On March 11, 2004 the

Office accepted the claim for left knee strain. It authorized left knee surgery which was performed on September 23, 2004.

By letter dated November 9, 2004, the Office informed appellant that she was being placed on the periodic rolls, effective September 23, 2004. Appellant was advised to notify the Office immediately when she returned to work to avoid an overpayment of compensation and that, if she worked during any period covered by a compensation payment, she must return the payment to the Office. On November 12, 2004 the Office issued a compensation check in the amount of \$3,123.45 for the period September 23 through October 30, 2004.

On January 21, 2005 the employing establishment advised the Office that appellant returned to full-time modified-duty work on January 10, 2005.

On February 15, 2005 the Office made a preliminary determination that appellant received an overpayment in the amount of \$1,093.00, during the period January 10 through 22, 2005 and that she was at fault because she knew or should have known that she was not entitled to wage-loss compensation during a period when she was earning wages. Appellant was advised that she could request a telephone conference, a final decision based on the written evidence only or a hearing within 30 days of the date of the letter if she disagreed that the overpayment occurred, if she disagreed with the amount of the overpayment and if she believed that recovery of the overpayment should be waived. The Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof within 30 days.

On March 8, 2005 appellant requested an oral hearing. She submitted an OWCP-20 form dated March 3, 2005. Appellant contended that she did not have any of the incorrectly paid checks or payments in her possession. She reported her monthly income of \$1,786.92 and expenses of \$2,756.98. Appellant's assets included \$2,468.44 cash on hand, \$100.00 in a checking account and \$8,800.00 in a savings account, totaling \$11,368.44. She contended that she was not at fault in the creation of the overpayment because she submitted the proper paperwork. Appellant informed the employing establishment that her payments should stop because she was going back to work on January 10, 2005. She was advised that her paperwork was not going to be submitted. Appellant also contended that the amount of the overpayment was incorrect.

By decision dated May 7, 2008, the Office finalized the determination that appellant was at fault in the creation of an overpayment in compensation in the amount of \$1,093.00 for the period January 10 through 22, 2005.<sup>1</sup> She was instructed to submit the \$1,093.00 to the Office within 30 days or a payment schedule would be instituted.

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<sup>1</sup> The record does not indicate why the Office did not conduct a hearing regarding its preliminary overpayment determination as requested by appellant.

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

Section 8102(a) of the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> Section 8116 of the Act defines the limitations on the right to receive compensation benefits. This section of the Act provides that, while an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>4</sup>

Section 10.500 of the Office's regulations provides that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>5</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$1,093.00. The record supports that she returned to work on January 10, 2005 and worked through January 22, 2005. Appellant received wage-loss compensation in the amount of \$1,093.00 for this period. As she was not entitled to compensation for the period after she returned to work, the amount of compensation that she received from January 10 through 22, 2005 represents an overpayment of compensation.<sup>6</sup> The evidence establishes the fact and the amount of the overpayment. The Board, therefore, finds that an overpayment occurred in the amount of \$1,093.00 as appellant returned to work but received wage-loss compensation from January 10 to 22, 2005.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(b) of the Act<sup>7</sup> provides that an overpayment of 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>8</sup> Thus, the Office may not waive the overpayment of compensation

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8102(a).

<sup>4</sup> *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

<sup>5</sup> 20 C.F.R. § 10.500.

<sup>6</sup> *W.F.*, 57 ECAB 705 (2006).

<sup>7</sup> 5 U.S.C. § 8129(b).

<sup>8</sup> *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

unless appellant was without fault.<sup>9</sup> Adjustment or recovery must, therefore, be made when an incorrect payment has been made to an individual who is with fault.<sup>10</sup>

On the issue of fault, section 10.433 of the Office's regulations, provides that an individual will be found at fault if he or she has done any of the following:

“(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (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 was incorrect.”<sup>11</sup>

With respect to whether an individual is without fault, section 10.433(b) of the Office's regulations provides in relevant part:

“Whether or not [the Office] determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.”<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

The Office found that appellant was at fault in creating the overpayment because she knew or should have known she was not entitled to wage-loss compensation for the period January 10 through 22, 2005 after she returned to full-time work. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives are proper.<sup>13</sup> 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.<sup>14</sup> Even if the overpayment resulted from negligence on the part of the Office, this does not excuse the employee from accepting payment which she knew or should have known that she was not entitled.<sup>15</sup>

By letter dated November 9, 2004, the Office clearly advised appellant that she was to immediately inform the Office upon her return to work to avoid an overpayment in compensation. If she worked during any period covered by a compensation payment, she was to

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<sup>9</sup> *Norman F. Bligh*, 41 ECAB 230 (1989).

<sup>10</sup> *Diana L. Booth*, 52 ECAB 370, 373 (2001); *William G. Norton, Jr.*, 45 ECAB 630, 639 (1994).

<sup>11</sup> 20 C.F.R. § 10.433(a).

<sup>12</sup> *Id.* at § 10.433(b); *Diana L. Booth*, *supra* note 10.

<sup>13</sup> *Danny E. Haley*, 56 ECAB 393 (2005).

<sup>14</sup> *Sinclair L. Taylor*, 52 ECAB 227 (2001).

<sup>15</sup> *See Russell E. Wageneck*, 46 ECAB 653 (1995).

return the payment to the Office. Under these circumstances, appellant knew or should have known that the payment of wage-loss compensation was incorrect.<sup>16</sup> Appellant returned to work on January 10, 2005 but did not immediately inform the Office or return the compensation received for the period she worked. She acknowledged that she knew she was not allowed to receive compensation when she informed the employing establishment of her return to work on January 10, 2005. As such appellant knew or should have known that she was not entitled to receive wage-loss compensation and her salary. The Board finds that she accepted compensation she knew or should have known was incorrect. Under section 10.433(a) of the Office's regulations, appellant is properly found to be at fault pursuant to section 8129 of the Act and is not entitled to waiver of the overpayment in compensation.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$1,093.00, during the period January 10 through 22, 2005, because she incorrectly received temporary total disability compensation after she returned to work. The Board further finds that the Office properly found that appellant was at fault in creating this overpayment and, therefore, ineligible for waiver of the recovery of the overpayment.<sup>17</sup>

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<sup>16</sup> *Neill A. Dewald*, 57 ECAB 451 (2006).

<sup>17</sup> The Board notes that it does not have jurisdiction to review the Office's recovery of the overpayment. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. *Judith A. Cariddo*, 55 ECAB 348 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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