

FACTUAL HISTORY

On October 29, 2003 appellant, then a 40-year-old transportation security screener and part-time employee, sustained injury when she picked up a heavy suitcase and felt a pop in her low back. She stopped work on November 15, 2003.² The Office accepted the claim for a lumbar sprain. In a claim for compensation, Form CA-7, received on January 21, 2004, the employing establishment noted that appellant worked 64 hours biweekly. Appellant returned to limited-duty work on March 24, 2004.

On January 19, 2006 the employing establishment informed the Office that it was unable to identify productive work within appellant's medically defined restrictions and withdrew appellant's light-duty position. The Office accepted appellant's claim for a recurrence of disability on January 19, 2006 and referred her to vocational rehabilitation.

On February 8, 2006 appellant was placed on the periodic rolls. The Office informed appellant that her compensation was based on a weekly rate of pay of \$605.63 and that, after appropriate deductions, she would receive a net amount of \$1,528.83 in compensation every 28 days. Appellant was also advised that her compensation benefits for total disability beginning January 19, 2006, would continue as long as the medical evidence supported her inability to work due to her work injury. The Office also advised her that her compensation would be terminated when she had earnings equal to or higher than the wages being paid for the job she held when injured.

On February 26, 2008 the Office noted that appellant had been erroneously paid wage loss based on a 40-hour workweek. Benefits were corrected to reflect that she worked six hours per day before she became disabled.

In a letter dated March 4, 2008, the Office informed appellant that her weekly rate of pay was \$454.22 per week and that, after appropriate deductions, she would receive a net amount of \$1,153.94 every 28 days. In a March 3, 2008 memorandum, it noted that compensation was based on an hourly rate of \$15.09 multiplied by 30 hours per week. The Office determined that appellant's gross weekly rate of pay was \$454.22.

On March 19, 2008 the Office made a preliminary determination that appellant received an \$11,073.87 overpayment of compensation because she received wage-loss compensation based on a 40-hour workweek. It noted that appellant received compensation from January 19, 2006 through February 16, 2008 based on a 40-hour workweek with a weekly rate of pay of \$605.63. However, she was only entitled to payment for 30 hours per week with a weekly rate of pay of \$454.22. From January 19, 2006 through February 16, 2008, appellant received a net compensation payment of \$41,995.44 but was only entitled to wage-loss compensation of \$30,921.57. The difference resulted in an overpayment of \$11,073.87. The Office found that appellant was with fault in the creation of the overpayment because she accepted a payment, which she knew or reasonably should have known to be incorrect. Appellant was informed of her right to challenge the Office's finding.

² The employing establishment noted that appellant was a part-time employee who worked 64 hours biweekly.

In a memorandum of telephone call dated March 20, 2008, appellant contacted the Office to inquire into the formula that was utilized to determine her hourly pay rate.

In a letter dated March 22, 2008, appellant disagreed with the overpayment and faultfinding. She contended that she had no knowledge that an overpayment had occurred because she relied upon the employing establishment and the human resources department. Appellant denied having any knowledge that the payments were incorrect. She noted that the overpayment was based on 30 hours per week, but she worked 32 hours per week. Appellant requested a waiver of the overpayment. She completed the Form OWCP-20, and provided financial information supporting a request for waiver.

In a decision dated August 14, 2008, the Office finalized its preliminary findings on the fact and amount of overpayment. It found that appellant was with fault because she accepted a payment that she knew or reasonably should have known was incorrect. The Office noted that appellant had submitted her financial information, but indicated that there was no allowance for waiver, since appellant was found to be with fault. Appellant was requested to forward a check in the amount of \$11,073.87 to the Office.

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 her duty.³ 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.⁴

ANALYSIS -- ISSUE 1

The record indicates that appellant received an overpayment from January 19, 2006 to February 16, 2008. Appellant received compensation for a 40-hour workweek; however, she was a part-time employee and was only entitled to receive payments based on her working 32 hours per week. The Office's records clearly show that appellant's compensation was based on her being a 40-hour per week employee while records from the employing establishment clearly establish that appellant was a part-time employee. Consequently, the Board finds that appellant received an overpayment of compensation from January 19, 2006 to February 16, 2008.

The Board notes that for the period January 19, 2006 through February 16, 2008, the Office's payment records establish that appellant received \$41,995.44 in compensation for total disability. In calculating the amount of the overpayment, the Office determined that appellant was only entitled to receive compensation based on a 30-hour workweek. Based on this, it determined that appellant received an overpayment of \$11,073.87. However, the Board notes that records from the employing establishment, a Form CA-7 received on January 21, 2004, support that appellant was actually working a 32-hour workweek. Appellant also asserts that her

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

workweek was 32 hours, not 30 hours. In view of the evidence supporting that appellant's compensation should be based on a 32-hour workweek, the Board finds that the case is not in posture for a decision with regard to the amount of the overpayment. On remand, the Office shall conduct such further development as it deems necessary and recalculate the amount of the overpayment.⁵

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation. However, the case is not in posture for decision regarding the amount of the overpayment and whether appellant was at fault in creating the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2008 decision is affirmed in part and remanded in part for further action consistent with this decision.

Issued: October 16, 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

⁵ In view of the Board's disposition on the amount of the overpayment, it is premature to address the Office's finding that appellant was at fault in creating the overpayment under 20 C.F.R. § 10.433(a)(3) since a change in the amount of the overpayment may impact a fault finding under that standard.