

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.G., Appellant**

**and**

**U.S. POSTAL SERVICE, OAKLAND PARK  
BRANCH, Fort Lauderdale, FL, Employer**

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**Docket No. 10-1027  
Issued: December 20, 2010**

*Appearances:*  
*Joanne Wright, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 25, 2010 appellant, through his representative, filed a timely appeal from the November 23, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant received an \$8,384.72 overpayment of compensation from April 14 to September 27, 2008.

**FACTUAL HISTORY**

On January 13, 1987 appellant, a 42-year-old letter carrier, sustained an injury in the performance of duty when an unknown assailant attacked him in the course of his employment. The Office accepted his claim for contusions to the neck, back and lower ribs and for herniated discs at L4-5 and L5-S1. On January 22, 1990 the Office adjusted appellant's compensation for wage loss to reflect a 50 percent wage-earning capacity based on his actual earnings in a part-time position. Appellant thereafter received compensation for partial disability on the periodic rolls.

In 2008 the employer withdrew appellant's limited duty. Appellant stopped work on April 14, 2008 and claimed compensation for wage loss. The Office paid compensation for temporary total disability and began paying for health benefits and life insurance coverage as well as his alimony.

The Merit Systems Protection Board (MSPB) reversed the employer's enforced leave or constructive suspension and ordered appellant retroactively restored to duty effective April 14, 2008 with appropriate back pay. The Office terminated compensation for temporary total disability effective September 28, 2008 and began paying compensation, as it had before, for partial disability under the prior wage-earning capacity determination, and with no deduction for health insurance, life insurance or alimony.

On September 18, 2009 the Office made a preliminary determination that appellant received an overpayment of \$8,384.72 in compensation because it had placed him on full compensation for temporary total disability from April 14 to September 27, 2008 instead of compensation of loss of wage-earning capacity. It determined how much compensation he should have received for the period, \$7,656.00, and subtracted that amount from the total compensation he did receive, \$16,528.53, which included payments for health benefits, life insurance and alimony. The Office noted that, because the employer retroactively deducted health benefits and life insurance premiums when reinstating wages, those premiums, totaling \$487.81, were being credited to lower the amount of the overpayment.

The Office found appellant not at fault in creating the overpayment and asked him to complete an overpayment recovery questionnaire. Appellant disagreed that an overpayment occurred and requested a telephone conference, which was held on October 23 and November 4, 2009.

The Office issued a decision on November 23, 2009 finalizing its preliminary determination. It denied waiver because appellant failed to submit the financial information necessary to consider his eligibility. The Office ordered \$150.00 withheld from continuing compensation payments to recover the debt.

On appeal, appellant argues that the employer was responsible for wrongly putting him out of work and that any money owed the Office should be reimbursed by the employer, not by him.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act places limitations on the right to receive compensation: while an employee is receiving compensation, he may not receive salary, pay or remuneration of any type from the United States, with certain exceptions.<sup>1</sup> It is therefore well established that an employee is not entitled to compensation for temporary total disability after

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<sup>1</sup> 5 U.S.C. § 8116(a).

returning to work.<sup>2</sup> “Temporary total disability” is defined as the inability to return to the position held at the time of injury or earn equivalent wages or perform other gainful employment.<sup>3</sup>

### ANALYSIS

Prior to April 14, 2008, appellant worked four hours a day and received compensation for four hours of injury-related disability. The Office made no deduction for health benefits, life insurance or alimony. It simply paid gross compensation for his 50 percent loss of wage-earning capacity under the January 22, 1990 decision.

Effective April 14, 2008, the employer withdrew appellant’s limited duty. In addition to paying compensation for the loss of half his wage-earning capacity, the Office began paying compensation for the other four hours for an additional wage loss. It now deducted for health benefits, life insurance and alimony.

A problem arose when the MSPB reversed the employer’s constructive suspension of appellant and ordered him retroactively restored to duty with back pay and benefits, and with appropriate credits and deductions, effective April 14, 2008. Because he was retroactively restored to duty with back pay, appellant was not entitled to the additional compensation he was receiving for the four hours of recent wage loss. While the MSPB decision may have granted appellant relief from the suspension, it also created an overpayment of compensation. The Board therefore finds that an overpayment arose beginning April 14, 2008. The Board will affirm the Office’s November 23, 2009 decision on the issue of fact of overpayment.

The effect of the MSPB decision was to restore the situation to before the April 14, 2008 suspension, when appellant received gross compensation for his 50 percent loss of wage-earning capacity, with no deduction for health benefits, life insurance or alimony. Had his prior compensation continued from April 14 to September 27, 2008, appellant would have received \$7,656.00 in compensation. The Board finds that any compensation above this amount was, by operation of the MSPB decision, compensation overpaid. The record shows that the Office paid \$16,528.53 in total compensation during the period, so the Office overpaid \$8,872.53.

The Office has decided, however, not to include in this overpayment the \$487.81 it deducted for health benefits and life insurance coverage, effectively reducing the overpayment to \$8,384.72. The Board notes that the Office also deducted from appellant’s compensation \$4,954.89 for alimony during the same period. Like the premiums paid for health benefits and life insurance, appellant did not receive the compensation that went towards alimony payments. It appears the Office intends for him to repay this alimony from his continuing compensation. As it did not adequately explain why it chose to treat the various deductions from compensation differently, the Board will set aside the Office’s November 23, 2009 decision on the issue of amount of overpayment. The Board will remand the case to the Office for further development

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<sup>2</sup> *E.g., Tammi L. Wright*, 51 ECAB 463, 465 (2000) (where the record established that the employee returned to work at the employing establishment for four hours per day from August 7, 1996 to January 8, 1997 but received compensation for total disability for that same period, the Board found that the employee received an overpayment of compensation).

<sup>3</sup> 20 C.F.R. § 10.400(b).

and an appropriate final decision on the amount of the overpayment, as well as the issues of waiver and recovery from later payments of compensation.<sup>4</sup>

Because appellant was retroactively reinstated with back pay, he has no right to the compensation he received for those four additional hours of wage loss beginning April 14, 2008. The Office has found that he was not at fault in this matter, which makes him eligible for consideration of waiver. Should it deny waiver, appellant remains responsible for repaying the compensation that was, in retrospect, mistakenly paid to him.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation from April 14 to September 27, 2008. The Board also finds that this case is not in posture on the issue of the amount of that overpayment. Further development on this issue, as well as the issues of waiver and recovery, is warranted.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed on the issue of fact of overpayment and is otherwise set aside. The case is remanded for further action consistent with this opinion.

Issued: December 20, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>4</sup> Until the Office resolves the amount of the overpayment, the issues of waiver and recovery are not ripe for adjudication.