

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD W. SATORNINO and U.S. POSTAL SERVICE,
POST OFFICE, Hicksville, N.Y.

*Docket No. 96-249; Submitted on the Record;
Issued April 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation in the amount of \$721.50 occurred; (2) whether the Office properly found that appellant was at fault in the creation of the overpayment; and (3) whether the Office properly determined that appellant should make immediate repayment of the overpayment.

The Office accepted appellant's claim for amputation of the left ring finger. On August 23, 1993 the Office awarded appellant compensation for 15.75 weeks from June 29 to October 17, 1993 for a 63 percent permanent loss of use of the left third digit.

In a preliminary determination dated January 26, 1995, the Office found that appellant received an overpayment of \$721.50, stating that when appellant submitted a travel voucher claiming reimbursement for travel expenses in the amount of \$240.50 from February 25 through April 8, 1994, the Office erroneously reimbursed appellant in the amount of \$962.00. The difference in the amount of reimbursement appellant sought, \$240.50, and the amount the Office paid him, \$962.00, resulted in the overpayment of \$721.50. The Office found that appellant was at fault in the matter of the overpayment. The Office informed appellant that if he disagreed with the fact or the amount of the overpayment or that he was at fault in the creation of the overpayment, he had the right to submit new evidence in support of his contention. The Office described the specific information appellant should provide pertaining to his income and his expenses if he should seek a waiver of repayment. The Office also stated that appellant could request a precoupment hearing.

By letter dated February 19, 1995, appellant requested an oral argument before an Office hearing representative. The hearing was held on July 21, 1995. At the hearing, appellant testified that when he received the check for \$962.00, he did not think it was for his travel expenses and it was his wife who actually received it. Appellant's representative at the hearing stated that appellant told him that the check had miscellaneous written on it and that it was not

dated. A computer printout from the Office indicated that the check for \$962.00 was paid to appellant on June 23, 1994. Appellant stated that he was assuming the Office owed him for his schedule award and that the check represented payment for part of it. He stated he was not expecting any compensation and had not submitted a request for any other reimbursement. Appellant stated that he did not see the document from the Office that accompanied the check because his wife took care of his finances. He also described his financial status consisting of his income and expenses.

By decision dated July 21, 1995, the Office hearing representative affirmed its preliminary determination that appellant received an overpayment of \$721.50 and that he was at fault in the matter of the overpayment. The Office determined that appellant's total monthly income was \$3,020.00 and his monthly expenses were \$2,262.49. The Office also found that appellant had bonds in the amount of \$3,000.00 and property worth \$5,000.00. The Office therefore found that appellant could make immediate repayment of the \$721.50 overpayment.

The Board finds that the Office properly found that appellant received an overpayment in the amount of \$721.50.

The Office based its finding that appellant received an overpayment of \$721.50 on the fact that appellant submitted a travel voucher, PS Form 1164, dated June 2, 1994, for the period February 25 to April 8, 1994 for 962 miles at the rate of .25 cents a mile for a total of \$240.50. The Office computer printout indicates that the Office paid appellant a check for \$962.00 on June 23, 1994. A notice to check recipient from the Treasury Financial Management Service accompanied the check and identified the check number, the check amount, \$962.00, and the check date, June 30, 1994. Appellant does not refute the fact of overpayment and has not submitted any evidence to the contrary.

The Board further finds that the Office properly found that appellant was at fault in the creation of the overpayment.

Section 8129(b) of the Federal Employees' Compensation Act¹ 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 be against equity and good conscience.² Adjustment or recovery must therefore be made when an incorrect payment has been made to an individual who is with fault.³

The implementing regulation⁴ provides that a claimant is with fault in the creation of an overpayment when he: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the

¹ 5 U.S.C. § 8129(b).

² *Philip G. Arcadipane*, 48 ECAB _____ (Docket No. 95-1024, issued June 6, 1997); *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

³ *William G. Norton, Jr.*, 45 ECAB 630, 639 (1994).

⁴ 20 C.F.R. § 10.320(b).

individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.

In the September 28, 1995 decision, the Office determined that appellant was at fault in the creation of the overpayment because he submitted his travel voucher on June 2, 1994 and received the payment of \$962.00 from the Office within 30 days. Appellant had not requested reimbursement for any other expense and his schedule award ended in October 1993 and appellant had been so advised. Further, as appellant's representative at the hearing testified, the check was identified as a miscellaneous payment rather than as any form of compensation. Because of these various factors, appellant knew or should have know that the payment of \$962.00 was incorrect. Appellant is therefore at fault in the creation of the overpayment, and no waiver of collection of the overpayment is possible under section 8129(b) of the Act.⁵

Section 10.321(a) of the regulations relating to recovery of overpayments states:

“Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of the future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any resulting hardship.”⁶

In the September 28, 1995 decision, the Office found, based on appellant's hearing testimony and documents appellant submitted, that appellant had a monthly income of \$3,020.00 and monthly expenses of \$2,262.49. The Office therefore determined that appellant's monthly income exceeded his monthly expenses by \$757.51. The Office also found that appellant had bonds in the amount of \$3,000.00 and property worth \$5,000. The Office's factual findings regarding appellant's income and expenses are supported by the evidence of record. Since appellant's monthly income exceeded his monthly expenses by \$757.51, and he had property and bonds whose combined value totaled \$8,000.00, it was not unreasonable for the Office to request that appellant repay the overpayment in the amount of \$721.50.

⁵ See *Phillip G. Arcadipane*, *supra* note 2.

⁶ 20 C.F.R. § 10.321(a); see *Burnett Terry*, 46 ECAB 457, 470 (1995).

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 28, 1998 is affirmed.

Dated, Washington, D.C.
April 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member