U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board
_____

In the Matter of PATRICIA A. WILLIAMS <u>and</u> DEPARTMENT OF JUSTICE,
U.S. PAROLE COMMISSION, Chevy Chase, Md.

*Docket No. 96-991; Submitted on the Record;*
*Issued April 28, 1998*
_____

DECISION and ORDER

Before   MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM


The issue is whether appellant was without fault in the matter of an overpayment of compensation in the amount of $3,716.00.

On November 14, 1995 the Office of Workers' Compensation Programs issued a preliminary determination that appellant received an overpayment of compensation in the amount of $3,716.00 which arose because she received compensation for temporary total disability from August 20 to October 14, 1995, a period during which she was entitled to compensation for loss of wage earning in the amount of $196.00. The Office preliminarily found appellant at fault in the matter of the overpayment because she accepted a payment which she knew or should have known was incorrect.

By final decision dated December 19, 1995, the Office found that appellant received an overpayment of compensation in the amount of $3,716.00, and that she was at fault in the matter of the overpayment. The Office noted that appellant had not responded to its invitation to submit evidence or argument if she disagreed with the fact or amount of the overpayment or with the Office's determination of fault.

On appeal, appellant does not contend that there was no overpayment of compensation or that the amount of the overpayment was incorrectly determined by the Office. Appellant does point to a letter dated December 7, 1995, addressed to the Office, in which she disputed the Office's finding that she was at fault in the matter of the overpayment.

The Board finds that this case is not in posture for decision.

In *William A. Couch*,[1] the Board remanded the case because the Office, in issuing a decision dated July 17, 1989, failed to consider new evidence that it received on July 13, 1989. The Board stated:

"The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office."

In the present case, the Office received appellant's December 7, 1995 letter disputing the finding of fault no later than December 18, 1995. This is established by the Office's copy of a check appellant sent with her December 7, 1995 letter to repay a portion of the overpayment; this copy contains a date of December 18, 1995. As the Office had appellant's December 7, 1995 letter addressing the issue of fault before it issued its December 19, 1995 decision finding appellant at fault in the matter of the overpayment, it was necessary for the Office to consider the contents of this letter, which was accompanied by additional evidence. The case will be remanded to the Office for its consideration of appellant's arguments and evidence on the issue of fault, to be followed by an appropriate decision on this issue.

---

[1] 41 ECAB 548 (1990).

The decision of the Office of Workers' Compensation Programs dated December 19, 1995 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, D.C.
     April 28, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member