

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TEAL D. STOKES and U.S. POSTAL SERVICE,  
POST OFFICE, Austin, Tex.

*Docket No. 97-484; Submitted on the Record;  
Issued December 18, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant received an overpayment in the amount of \$1,095.87 and, if so, whether she was without fault in the matter of this overpayment.

The Board finds that appellant received an overpayment in the amount of \$1,095.87.

Appellant sustained a lumbar strain in the course of her federal employment on December 29, 1995 and began receiving compensation for total temporary disability on the periodic rolls on May 3, 1996. On June 10, 1996 appellant returned to limited duty working four hours per day and the Office of Workers' Compensation Programs reduced her compensation based on her actual earnings. On June 24, 1996 appellant began working six hours per day and on August 13, 1996 appellant returned to full employment. Appellant continued to receive compensation in the amount of \$2,009.23 from June 24 through August 17, 1996 based on her working four hours per day. Appellant, however, should have only received \$913.36 in compensation from June 24 through August 12, 1996, based on her working six hours per day during this period, and no compensation for disability after her return to work on August 13, 1996 at the same wages.<sup>1</sup> The Office, therefore, properly found that an overpayment existed in the amount of \$1,095.87. By letter dated September 5, 1996, the Office notified appellant of its preliminary overpayment determination. Following receipt of evidence of appellant, by decision dated October 8, 1996, the Office finalized the overpayment decision finding appellant at fault.

The Board further finds that appellant was not without fault in the amount of compensation.

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<sup>1</sup> In general, the term "disability" under the Federal Employees' Compensation Act means "incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury." *Billy G. Sinor*, 35 ECAB 419 (1983).

Section 8129(a) of the Act provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery by the United States may not be made when 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>2</sup> No waiver of an overpayment is possible if the claimant is not “without fault” in helping to create the overpayment.

In determining whether an individual is not “without fault” or, alternatively, “with fault,” section 10.320 of Title 20 of the Code of Federal Regulations states in pertinent part:

“An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the 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.”<sup>3</sup>

In the instant case, the Office informed appellant in a letter dated June 18, 1996 that it was reducing her compensation based on her actual earnings from her four-hour per day limited-duty position. The Office then reduced appellant’s compensation accordingly. Appellant, therefore, should have known that her compensation would be further reduced when her actual earnings increased because she returned to work six hours per day, and then later when she returned to work full time. In fact, appellant acknowledged in her September 11, 1996 response to the Office’s preliminary determination that she knew the overpayment amount paid was not due to her, but that she needed the money to pay bills and feed her family. Appellant, therefore, knew or should have known she was not entitled to the \$1,096.87 she received as an overpayment from June 24 through August 17, 1996. As appellant was not without fault in the overpayment of compensation in the amount of \$1,095.87, this overpayment cannot be waived.

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<sup>2</sup> 5 U.S.C. § 8129.

<sup>3</sup> 20 C.F.R. § 10.320(b).

The decision of the Office of Workers' Compensation Programs dated October 8, 1996 is affirmed.

Dated, Washington, D.C.  
December 18, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member