

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE DUPUIS and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-1456; Submitted on the Record;
Issued July 28, 1998*

DECISION and ORDER

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

The issues are (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a); and (2) whether the Office properly denied appellant's request for a hearing.

In the present case, the Office accepted that appellant had a sacroiliac strain and paid disability compensation commencing August 3, 1983. Appellant performed some work in the private sector from 1984 through January 1986 and for about two months in 1991 but otherwise has not worked since he began receiving compensation.

In a preliminary determination dated October 9, 1986, the Office determined that an overpayment in the amount of \$20,266.18 had occurred because appellant had actual earnings from December 9, 1984 to December 30, 1985 while he was receiving compensation benefits. The Office found that appellant was at fault in the creation of the overpayment as he should have been aware that he was not entitled to compensation for temporary total disability benefits while earning wages. Appellant was informed that he could request either a precoupment hearing or a waiver and submit both a detailed explanation of his reasons for seeking waiver and information about his income and expenses. Appellant was afforded 30 days to furnish the requested factual and financial information or request a hearing and was warned that failure to submit the information would result in a denial of waiver of the overpayment and a final decision would be issued on the basis of information currently in appellant's file.

Appellant did not request a hearing within the allotted 30 days.

On November 26, 1986 the Office finalized its preliminary decision and found that an overpayment in the amount of \$20,266.18 had occurred in appellant's case. The Office requested that appellant repay the amount of the overpayment.

By decision dated February 18, 1994, the Office terminated appellant's compensation benefits effective March 6, 1994 on the grounds that appellant had no work-related residual disability from his February 28, 1983 employment injury.

Appellant requested an oral hearing to address the termination of benefits before an Office hearing representative which was held on September 15, 1994.

By decision dated October 31, 1994, the hearing representative affirmed the Office's February 18, 1994 decision.

By letter dated July 12, 1995, appellant requested that the decision on his overpayment be reconsidered as it was "based on the fact that it was calculated in error to [his] hours of work."

By decision dated July 13, 1995, the Office denied appellant's request for reconsideration of the November 26, 1986 decision.

By letter dated September 27, 1995, appellant requested an oral argument before an Office hearing representative regarding his "overpayment which began in 1986."

By decision dated March 12, 1996, the Office denied appellant's request for a hearing on the amount of the overpayment, stating that there were no provisions for a hearing after a final overpayment decision had been issued. The Office noted that a preliminary finding of overpayment was issued to appellant on October 9, 1986, that he was advised that if he disagreed with the preliminary finding, he could request a hearing if such request was made within 30 days, and appellant made no such request for a hearing.¹

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

Since more than one year has elapsed from the date of the Office's November 26, 1986 decision to the filing of appellant's appeal on April 12, 1996, the Board lacks jurisdiction to review that decision.² The only decisions before the Board on this appeal are the Office's July 15, 1995 decision denying appellant's request for reconsideration and the Office's March 12, 1996 decision which denied appellant's request for an oral hearing.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advanced a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not

¹ In an interoffice message dated April 4, 1996, the Office indicated that it had been collecting money toward the overpayment from appellant's ongoing compensation benefits but when the compensation benefits were terminated in March 1994, no payment toward the balance of the overpayment had been received.

² See *Michael A. Gnoth*, 41 ECAB 988, 991 (1990); 20 C.F.R. § 10.138(b)(2).

³ 5 U.S.C. § 8101 *et seq.*

previously considered by the Office.⁴ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Evidence that does not address the particular issue involved, in the present case whether the Office properly determined the amount of appellant's overpayment, does not constitute a basis for reopening the case.⁷

In its November 26, 1986 decision, the Office determined that appellant an overpayment had occurred in the amount of \$20,266.18 for the period from December 9, 1984 to December 30, 1985 while appellant was receiving compensation benefits. By letter dated July 12, 1995, appellant requested reconsideration of that decision stating an error had been made in the calculation of the number of hours he worked. Appellant, however, did not submit any evidence to show that the Office erred in calculating the number of hours he worked or that the calculation of the overpayment was erroneous. For instance, the record contains a note by appellant on an overpayment questionnaire, Form OWCP-20, dated November 25, 1994, in which he generally stated that the Office made a mistake in formulating the overpayment. Appellant did not show that the Office erroneously applied or misinterpreted a rule of law and he did not advance a point of law or fact not previously considered by the Office. Appellant has therefore not established that the Office abused its discretion in its July 13, 1995 decision by denying appellant's request for a review on the merits of its November 26, 1986 decision under section 8128(a) of the Act.

The Board also finds that the Office properly denied appellant's request for a hearing made after issuance of the final overpayment decision.

Section 10.321(h) of Title 20 of the Code of Federal Regulations establishes that the only appellate remedy available to a claimant after a final overpayment decision has been issued is an appeal to the Board. This section states as follows:

“If additional written evidence is not submitted, or a hearing requested, within the 30-day period [after issuance of the preliminary overpayment decision], the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The final decision concerning an overpayment, whether rendered subsequent to a prerecoupment hearing or in the absence of the submission of additional written evidence, is not subject to the hearing provision of 5 U.S.C. § 8124(b) nor the reconsideration provision of 5 U.S.C. § 8128(a). An individual aggrieved or adversely affected by a decision concerning an

⁴ 20 C.F.R. § 10.138(b)(1) and (2).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁷ *Richard L. Ballard*, *supra* note 6 at 150; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

overpayment may request review by the Employees' Compensation Appeals Board."⁸

In the present case, appellant did not request a hearing on the overpayment until March 12, 1996, several years after the Office's issuance of the Office's October 9, 1986 preliminary notice of overpayment and the November 26, 1996 final overpayment decision. Appellant is therefore not entitled to a precoupment hearing before an Office hearing representative on the fact and amount of the overpayment after the expiration of the 30-day period following the preliminary overpayment determination.⁹ As appellant did not make any written request within the 30-day period, the Office properly made a final overpayment decision based on the available evidence of record. Following the final overpayment decision, no right to a hearing under section 8124(b) attaches to such decision.¹⁰

Accordingly, the decisions of the Office of Workers' Compensation Programs dated March 12, 1996 and July 13, 1995 are hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ 20 C.F.R. § 10.321(h).

⁹ *Fred A. Cooper*, 44 ECAB 498, 510 (1993); *Michael A. Gnoth*, *supra* note 2 at 991.

¹⁰ *Id.*; *Kenneth E. Miller*, 39 ECAB 1196, 1205-06 (1988).