

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONATHAN D. BAGGE and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 96-2106; Submitted on the Record;
Issued July 27, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$1,389.65 was created; and (2) whether the Office properly determined that appellant was at fault in the creation of the overpayment.

In the present case, the Office accepted that appellant sustained a thoracic strain, cervicodorsal strain, chronic myofascial syndrome, and left ulnar nerve paresthesia causally related to employment injuries on April 14 and May 27, 1986, and November 13, 1987. Appellant received compensation based on a loss of wage-earning capacity. By letter dated September 21, 1995, the Office advised appellant that an overpayment of \$12,152.13 had occurred during the period July 15, 1991 to April 30, 1995. The Office made a preliminary finding that appellant was at fault in the creation of the overpayment.

In a letter dated October 11, 1995, the Office advised appellant that the original calculation as to the amount of the overpayment was in error. According to the Office, the amount of the overpayment was \$1,389.65, based on appellant's receipt of five payments during the period October 1, 1993 to April 30, 1994. The Office noted that appellant had returned some of the payments received after his retirement, but listed five payments that had not been returned and which represented an overpayment. With regard to fault, the Office stated, "Prior to making an initial finding regarding the issue of 'fault' in this matter, it seems prudent to ask that you review your records carefully to determine whether or not you actually received the above listed checks and if so, whether or not you returned them to the Office."

In a decision dated June 4, 1996, the Office determined that an overpayment of \$1,389.65 occurred and that appellant was at fault in the creation of the overpayment.

The Board has reviewed the record and finds that the Office failed to follow its established procedures with regard to overpayments in this case.

Office regulations regarding overpayments provide in pertinent part:

“Before adjusting future payments or otherwise seeking to recover an overpayment, the Office shall provide the individual with written notice of: (1) The fact and amount of overpayment; (2) Its preliminary finding of whether the individual is at fault in the creation of the overpayment; (3) The individual’s right to inspect and copy Government records relating to the overpayment; (4) The individual’s right to request a prerecoupment hearing within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver; (5) The individual’s right to submit additional written evidence within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary fault finding, or for the purpose of requesting waiver.”¹

In addition, the Office’s procedure manual provides:

“If the claimant is determined to be at fault, [F]orm CA-2201 must be released within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of fault must be clearly stated. Form CA-2201 advises the claimant of the right to submit evidence and the right to a prerecoupment hearing on the issues of: (a) fact and amount of the overpayment; (b) fault; and (c) waiver. Along with the letter, the SrCE (Senior Claims Examiner) should provide a clear statement showing how the overpayment was calculated.”²

In this case, the Office issued a preliminary determination letter dated September 21, 1995. This letter, however, contains a grossly incorrect amount of the overpayment, and an incorrect period of the overpayment, since it identifies the period July 15, 1991 to April 30, 1995. The preliminary finding of fault is also inaccurate, since it refers to appellant’s receipt of Office of Personnel Management (OPM) retirement following the expiration of his schedule award on July 15, 1991, even though appellant did not retire until October 1993. The Board finds that the September 21, 1995 letter does not serve as sufficient notice of a preliminary finding on the relevant overpayment issues.

The October 11, 1995 letter is also insufficient to meet the Office’s procedural requirements. While modifying the amount of the overpayment, it clearly does not make even a preliminary finding of fault, since it advises appellant to review his records “prior to making an initial finding regarding the issue of ‘fault.’” Moreover, the October 11, 1995 letter does not advise appellant of his prerecoupment right to a hearing.

¹ 20 C.F.R. § 10.321(d).

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(1) (September 1994).

There is no indication on the record that the Office provided any additional written information to appellant regarding the overpayment prior to the June 4, 1996 decision.³ The Board finds that the Office failed to provide an adequate preliminary finding as to the proper amount of the overpayment, with a clear statement as to a finding of fault and the reasons for that finding, and notice of an opportunity to request a prerecoupment hearing on the issues presented or to submit additional written evidence. Accordingly, the Board finds that the Office failed to properly follow its procedures in this case.

The Board notes that the record transmitted to the Board also contains a February 27, 1997 Office decision regarding a \$1,389.65 overpayment. Because this decision was issued while the Board had jurisdiction over the case, and involves the same issue on appeal, the decision is null and void.⁴

The decision of the Office of Workers' Compensation Programs dated June 4, 1996 is reversed.

Dated, Washington, D.C.
July 27, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ The Office advised appellant's congressional representative in an October 11, 1995 letter that an "amended overpayment letter" would be issued after 30 days, but there is no indication that such a letter was issued.

⁴ *Douglas E. Billings*, 41 ECAB 880, 895 (1990).