

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELE LAGANA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, NY

*Docket No. 99-1498; Submitted on the Record;
Issued December 26, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether an overpayment of \$5,197.89 occurred in appellant's case.

In January 1997 appellant, then a 27-year-old fiscal accounts clerk, sustained bilateral carpal tunnel syndrome and a cervical muscle spasm in the performance of duty. She sustained a recurrence of disability on December 15, 1997. Effective March 8, 1998, appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

The record shows that appellant returned to full-time duty on August 17, 1998. By letter dated October 19, 1998, she returned two compensation checks which she indicated she was not entitled to receive due to her return to work on August 17, 1998. She noted that the checks were sent to her old address and asked the Office of Workers' Compensation Programs to correct her address in its records. Her letter is marked as being received by the Office on November 5, 1998. The record indicates that the Office sent two checks to appellant on September 12 and October 10, 1998 for the periods August 16 to September 12, 1998 and September 13 to October 10, 1998, respectively, and that the checks were returned to the Office.

An Office daily computation log dated November 19, 1998 indicates that the Office intended to send appellant a compensation check on November 27, 1998 for the period August 17 through November 7, 1998. The log entry reflects an old incorrect address for appellant.¹

By letter dated January 14, 1999, the Office advised that it had made a preliminary finding that she had been overpaid in the amount of \$5,197.89 and that she was found to be at fault in the creation of the overpayment because she returned to work on August 17, 1998 but accepted compensation benefits through November 7, 1998.

¹ By letter dated June 22, 1998, appellant advised the Office of her change of address.

By decision dated April 19, 1999, the Office determined that appellant had received an overpayment of compensation in the amount of \$5,197.89 and that she was at fault in the creation of the overpayment because she returned to work on August 17, 1998 but accepted compensation benefits through November 7, 1998.

The Board finds that this case is not in posture for a determination of whether an overpayment of \$5,197.89 occurred in appellant's case.

The Office found an overpayment occurred because appellant returned to work on August 17, 1998 and continued receiving compensation for total disability through November 7, 1998. The evidence of record, however, raises a question of whether appellant did, in fact, receive the compensation at issue. The record reflects that on October 19, 1998 appellant returned two checks to the Office dated September 12 and October 10, 1998 covering the periods August 16 to September 12, 1998 and September 13 to October 10, 1998 and advised the Office that she was returning the checks because she was not entitled to receive them due to her return to work on August 17, 1998. An Office log dated November 19, 1998 indicates that a check was due to be sent to appellant on November 27, 1998 covering the period August 17 to November 7, 1998. This log entry contained appellant's old address.

It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.² This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.³

In this case, it appears from the record that the Office may have sent appellant a check on November 27, 1998, covering the period August 17 to November 7, 1998 to an incorrect address. Therefore, the presumption of receipt under the mailbox rule does not arise. The record contains no evidence that appellant accepted and cashed a check for the period in question. In fact, the record indicates that on October 19, 1998 appellant returned two checks to the Office covering the period August 16 to October 10, 1998. There is no evidence of record that appellant accepted and cashed compensation checks for the period August 17 to November 7, 1998.

The Board will set aside the Office's April 19, 1999 decision finding an overpayment of \$5,197.89 and will remand the case for further development. The Office should determine whether it sent appellant any checks for the period August 17 to November 7, 1998 which were cashed by appellant. After such further development as may be necessary, the Office shall make appropriate findings and issue an appropriate preliminary determination and final decision.⁴

² See *George F. Gidicsin*, 36 ECAB 175, 178 (1984) (when the Office sends a notice to a claimant, it must be assumed absent any other evidence, that the claimant received the notice).

³ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁴ See *Kimberly A. Raffile*, 50 ECAB ____ (Docket No. 97-1791, issued February 17, 1999).

The decision of the Office of Workers' Compensation Programs dated April 19, 1999 is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
December 26, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member