

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA BUCHANAN and U.S. POSTAL SERVICE,
POST OFFICE, Ventura, CA

*Docket No. 99-238; Submitted on the Record;
Issued June 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$6,612.45 was created during the period September 25, 1993 to April 27, 1996; and (2) whether the Office properly determined that appellant was at fault in creating the overpayment.

In the present case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to her federal employment. Appellant began receiving compensation for temporary total disability on the periodic rolls as of October 1990.

By letter dated June 27, 1996, the Office advised appellant that a preliminary determination had been made that an overpayment of \$6,612.45 occurred from September 25, 1993 to April 27, 1996. The Office stated that appellant had been paid augmented compensation during that period, but did not have any eligible dependents. With regard to fault, the Office determined that she was at fault in creating the overpayment and therefore was not entitled to waiver of the overpayment.

In a decision dated July 2, 1998, an Office hearing representative affirmed fact of overpayment, amount of the overpayment and finding of fault.

The Board has reviewed the record and finds that the case requires further development with respect to the amount of the overpayment.

Under 5 U.S.C. § 8110, a claimant is entitled to augmented compensation at the rate of 75 percent of her monthly pay if she has a dependent. Under this section, a dependent includes an unmarried child under 18 years of age; the Office regulations implementing the Federal

Employees' Compensation Act, however, provides that augmented compensation will continue if the unmarried child is a student under 23 years of age.¹

In the present case, there does not appear to be a dispute that an overpayment of compensation occurred in this case. The record indicates that appellant received augmented compensation, at the three-fourths rate for a claimant with dependents, through April 27, 1996. Appellant concedes that she did not have an eligible dependent during this entire period; she does, however, contest the Office's finding that the period of the overpayment began on September 25, 1993, the date her daughter became 18 years old. She asserted at the November 24, 1997 hearing that her daughter continued to be a student until August 1994. On this issue, the Board finds that the case must be remanded for further development.

The hearing representative found that appellant had not responded to a March 8, 1995 request from the Office for information regarding dependent status and furthermore her testimony on this issue was "vague and indeterminate." The record does contain a request for information from the Office; however, appellant's testimony with respect to her daughter is straightforward. Appellant stated that her daughter was in her senior year of high school during the 1993 through 1994 school year, and she continued to enroll through August 1994. She eventually returned to school in September 1996 and received her high school diploma. Moreover, it appears that at the hearing appellant submitted some documentation supporting her daughter's status as a student after September 25, 1993. The hearing representative refers to August 1994 as "the date I have on the paper here that you submitted to me where you have an English class there." There is also a reference to a document containing the heading "previous school attended."

After careful review, the Board is unable to find any document in the case record that corresponds to the document(s) referenced by the hearing representative.² Since appellant apparently did submit some evidence with respect to dependent status after September 25, 1993, the case will be remanded to the Office for further development. On remand, the Office should secure evidence regarding the dependent status of appellant's daughter after September 25, 1993. After such further development as it deems necessary, the Office should issue an appropriate decision.

In view of the Board's finding, the issue of fault will not be addressed. Before it can be determined whether appellant accepted a payment that she knew or should have known was incorrect, the specific period of the overpayment must be determined and the factual circumstances regarding acceptance of specific payments must be established.

¹ 20 C.F.R. §§ 10.107(b); 10.5(a)(25).

² There is a copy of a high school diploma issued October 31, 1996, but no other evidence regarding the daughter's high school attendance can be found.

The decision of the Office of Workers' Compensation Programs dated July 2, 1998 is affirmed with respect to fact of overpayment, and set aside and remanded with respect to the amount of overpayment and the determination of fault.

Dated, Washington, D.C.
June 5, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member