

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTIN L. STRINGER and U.S. POSTAL SERVICE,  
NORTHEAST STATION, Columbia, SC

*Docket No. 99-2069; Submitted on the Record;  
Issued September 22, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$2,874.98 for the period from April 3 through May 25, 1996; and (2) whether the Office properly found that appellant was not "without fault" in the creation of that overpayment and, therefore, it was not subject to waiver.

On June 23, 1995 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that his bilateral carpal tunnel syndrome was caused by using his arms, wrists, hands and fingers during his federal employment. The record shows that the Office accepted appellant's claim and paid compensation benefits for the period from April 3 through May 25, 1996, when he returned to light duty.<sup>1</sup>

By letter dated March 19, 1998, the Office advised appellant of its preliminary determination that an overpayment of compensation was paid to him in the amount of \$2,874.98 for the period from April 3 through June 5, 1996 and that he was not without fault in creating the overpayment as he knowingly failed to disclose an increase in his benefits from the Department of Veterans Affairs (VA) covering the same period and same condition and that he was aware or should have been aware that he was not entitled to increased VA benefits while in receipt of compensation benefits for carpal tunnel syndrome.

On April 6, 1998 appellant requested a hearing before an Office hearing representative on the issues of fault and waiver of the overpayment.

Appellant submitted an overpayment recovery questionnaire (Form OWCP-20) dated April 3, 1998. On the form, appellant alleged that the overpayment amounted to his salary as he

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<sup>1</sup> The record also shows that appellant was terminated by the employing establishment effective September 30, 1998.

was not working during that period. He also alleged that the VA benefits were for his service-connected wrist disability. Appellant stated that his carpal tunnel syndrome and service-related wrist injury were not the same injury. He also stated that he reported to the employing establishment in June or July 1996 that his service-connected disability increased to 30 percent. Appellant noted his resources, assets and monthly expenses.

By decision dated April 8, 1998, the Office affirmed its preliminary determination that an overpayment of compensation had been made to appellant in the amount of \$2,874.98 for the period from April 3 to June 5, 1996 on the grounds that he received dual benefits from the Office and VA, for the same injury and failed to make an election of benefits between the two. Thus, he was not without fault in creating the overpayment.

On October 23 and November 30, 1998, appellant filed claims for compensation on account of traumatic injury or occupational disease (Form CA-7). On both claim forms, he noted that he received monthly VA benefits in the amount of \$391.00 for his left wrist, right ankle, back strain, left shoulder and right finger conditions. On the latter claim form, he indicated that the claim was for the period from December 6, 1994 to September 30, 1998.

On October 23, 1998 appellant filed a claim for continuing compensation on the account of disability (Form CA-8) for the period from December 6, 1994 to May 27, 1998. On the claim form, appellant noted that, since filing his initial claim for compensation, he received monthly VA benefits in the amount of \$266.00 for a January 1996 disability.

On January 26, 1999 an oral hearing was held before an Office hearing representative. Appellant testified, among other things, that prior to sustaining bilateral carpal tunnel syndrome related to his federal employment, he sustained service-connected left wrist, left shoulder, lower back and right ankle conditions for which he received compensation benefits from VA. He also testified that his VA disability rating increased from 10 percent to 30 percent effective January 1996 following his carpal tunnel surgery. Appellant stated that his disability rating increased to 100 percent on September 20, 1996 at which time he received a monthly benefit of \$435.00 from VA. He asserted that he assumed that he was entitled to all of the benefits he received and discussed his earnings, assets, expenses and liabilities. Appellant testified that he would be unable to repay the \$2,874.98 overpayment and, therefore, he would request that repayment be waived if an overpayment were determined. He testified that he did not believe he was compensated for the same injury because VA informed him that it would not pay for work-related injuries, it indicated that it was not paying dual benefits and he provided documentation to VA regarding his workers' compensation claim.

Appellant submitted a letter dated January 8, 1998 in which the Office notified him that he was not entitled to dual benefits. He also submitted a letter dated October 21, 1997 from VA stating that it would pay compensation benefits for injuries incurred or aggravated by "service" and a form dated October 10, 1997<sup>2</sup> indicating that he received VA benefits and any increase in those benefits did not result from a work-related injury. The form stated that appellant's

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<sup>2</sup> The form was signed but the signature was illegible.

monthly benefits changed on July 1, 1997 to \$437.00 and indicated that he was receiving benefits for “residuals left wrist injury 10 percent, limited motion right ankle 10 percent....”

By statement dated February 19, 1999, the employing establishment responded to appellant’s January 26, 1999 hearing testimony. It asserted that appellant was at fault in creating the overpayment because he provided false information regarding his VA benefits. The employing establishment alleged that appellant has a history of providing false information and that he made false statements regarding his household income, assets, expenses and liabilities.

By decision dated March 29 and finalized April 1, 1999, the hearing representative affirmed the Office’s March 18, 1998 preliminary determination that an overpayment of compensation was made in the amount of \$2,874.98 and that appellant was not without fault in creating that overpayment and, therefore, waiver of recovery would not be made. The hearing representative found that appellant’s failure to disclose his receipt of VA benefits showed that he was at fault.

The Board finds that this case is not in posture for decision as the evidence of record does not establish whether appellant received dual benefits for the same injury.

Section 8116(a) of the Federal Employees’ Compensation Act<sup>3</sup> provides:

“(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive a salary, pay, or remuneration of any type from the United States, except –

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the [Department of Veterans Affairs] unless such benefits are payable for the same injury or the same death.
- (4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services....”

However, eligibility for or receipt of benefits under subchapter III of Chapter 83 of this title, or another retirement system for employees of the government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.”

Under this section, it is unclear whether appellant received dual benefits from the Office and from VA as the medical evidence of record does not indicate whether these benefits were awarded for the same injury. If appellant received disability benefits from VA for carpal tunnel

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<sup>3</sup> 5 U.S.C. § 8116(a).

syndrome, his compensation benefits from the Office constitute an overpayment. If, however, appellant's disability benefits relate to a different condition, he is entitled to both benefits and did not receive an overpayment of compensation.

The Office decision dated April 4, 1998 refers to evidence submitted from the employing establishment's investigative service regarding appellant's receipt of dual benefits. The record, however, does not contain such an investigative report and, in fact, contains scant information regarding appellant's VA benefits. Thus, the record before the Board is incomplete and would not permit an informed adjudication by the Board. The case must therefore be remanded to the Office to secure relevant information from VA, to be followed by a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated March 29, 1999 is set aside and the case remanded for further proceedings consistent with this decision of the Board.<sup>4</sup>

Dated, Washington, DC  
September 22, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>4</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those decisions issued within one year prior to the filing of the appeal. *Peter J. Smith*, 48 ECAB 453, 457 (1997). As appellant filed this appeal on May 13, 1999, the only decision properly before the Board is the Office's March 29, 1999 decision. The Board notes that subsequent to this appeal, the Office issued a decision dated July 6, 1999 finding that appellant's employment as a modified letter carrier fairly and reasonably represented his wage-earning capacity. Appellant requested reconsideration of this decision. The Board may not consider the Office's July 6, 1999 decision as appellant has not filed an appeal from this decision. *See* 20 C.F.R. § 501.3.