

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY E. LABBE and U.S. POSTAL SERVICE,
POST OFFICE, Augusta, ME

*Docket No. 00-969; Submitted on the Record;
Issued February 20, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant was at fault in the creation of an overpayment of \$1,247.63 in compensation from April 17 through May 25, 1996.

In the prior appeal of this case,¹ the Board found that an overpayment of compensation occurred when appellant returned to work part time beginning April 17, 1996 and the Office of Workers' Compensation Programs continued to pay compensation for temporary total disability through April 27, 1996. The record, however, was unclear whether appellant continued to receive compensation from April 28 through May 24, 1996, as the Office had determined. The Board, therefore, remanded the case to the Office to predetermine the period and amount of the overpayment.

The Board also set aside the Office's finding that appellant was at fault in the creation of the overpayment because the Office failed to produce copies of the checks or other relevant payment records of the compensation checks.

The facts of this case as set forth in the Board's prior decision are incorporated by reference.

On remand the Office produced a photocopy of a check dated April 27, 1996 in the amount of \$2,025.60. Near the bottom of the check appears the following: "COMPENSATION FROM [March 31, 1996 TO April 27, 1996.]" Appellant endorsed the check, and it was cancelled on April 29, 1996. Another photocopy shows a check dated May 25, 1996 in the amount of \$2,025.60. Near the bottom of the check appears the following: "COMPENSATION FROM [April 28 TO May 25, 1996.]" Appellant also endorsed this check, and it was cancelled on May 28, 1996.

¹ Docket No. 98-39 (issued July 6, 1999).

In a decision dated November 10, 1999, the Office found that an overpayment of \$1,247.63 occurred from April 17 through May 25, 1996 because appellant received and accepted compensation for total disability while she worked and received earnings for the same period. The Office also found that appellant was at fault in the creation of the overpayment because she knew or should have known that she was not entitled to the full amount paid.

The Board finds that appellant was at fault in the creation of an overpayment of \$1,247.63 in compensation from April 17 through May 25, 1996.

The record in this case now substantiates the period of the overpayment, which began on April 17, 1996 when appellant returned to work part time and continued to receive compensation for total disability through May 25, 1996. The Office calculated the total amount of compensation paid for this period and subtracted the amount of compensation due for partial disability as well as a premium for health and optional life insurance. The amount of the overpayment, \$1,247.63, is established.

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that the payments he or she receives from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

“(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

“(2) Failed to provide information which he or she knew or should have known to be material; or

“(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)”²

Whether an individual was at fault in the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.³

By letter dated April 11, 1996, the Office informed appellant that she was being paid compensation for being off work. The Office advised appellant that she was expected to return to work, including light duty or part-time employment, if available, when she was no longer totally disabled because of her injury. The Office informed her that she would be paid compensation every four weeks until June 1, 1996 or until she returned to work, whichever

² 20 C.F.R. § 10.433(a) (effective January 4, 1999).

³ *Id.* at section 10.433(b).

occurred first. The Office informed her of the amount of compensation she would be receiving with each check. The Office further advised appellant as follows:

“To avoid an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU RETURN TO WORK. Return to us any compensation check received after you return to work.” (Emphasis in the original.)

Appellant returned to part-time employment on April 17, 1996 and thereafter received two compensation checks. These checks were in the exact amount specified by the Office in its April 11, 1996 letter and clearly showed the dates for which compensation was being paid. Rather than return these checks as instructed by the Office, appellant endorsed the checks and deposited them. Based on these circumstances, the Board finds that appellant was at fault in the creation of the overpayment because she accepted payments which she knew or should have known to be incorrect. Appellant argues that she should not be found at fault because she notified the Office when she returned to work part time in April. Nonetheless, appellant does not dispute that she cashed two compensation checks during a time when she was working, instead of returning them to the Office as instructed. Because appellant was at fault in the creation of the overpayment, waiver of the overpayment is precluded.

The November 10, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 20, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member