

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN F. KNOBLOCK and U.S. POSTAL SERVICE,
MASTIC POST OFFICE, Mastic, NJ

*Docket No. 00-2573; Submitted on the Record;
Issued June 25, 2001*

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 appellant received an overpayment of compensation in the amount of \$475.02 for the period December 6, 1999 through January 1, 2000; and (2) whether the Office properly determined that appellant was not without fault in the creation of the overpayment.

On March 18, 1998 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim, alleging that on that date she lifted a tray of flats and felt a sharp stabbing pain in her lower back.

The Office accepted appellant's claim for a lumbar strain.

Appellant returned to work at the employing establishment in a limited-duty position on December 6, 1999.

By letter dated March 2, 2000, the Office advised appellant that a preliminary determination had been made that an overpayment of compensation had occurred in her case in the amount of \$475.02 because she was only entitled to compensation for 90 hours of intermittent wage loss for the period December 6, 1999 through January 1, 2000 rather than the compensation she received in the amount of \$1,281.44 for this period. The Office also advised appellant that she was at fault in the creation of the overpayment. Further, the Office advised appellant that, if she disagreed with the finding, she had a right to submit new evidence in support of such belief. In addition, the Office advised appellant that, if she believed she should receive a waiver, she could request a telephone conference with the Office, request a final decision based on the written record or request a prerecoupment hearing.

On March 5, 2000 appellant requested a prerecoupment hearing and a waiver of recovery of the overpayment.

By decision dated June 16, 2000, the hearing representative finalized the Office's preliminary determination.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$475.02 for the period December 6, 1999 through January 1, 2000.

The record contains evidence, which shows that appellant received compensation in the amount of \$1,281.44 after she returned to limited-duty work at the employing establishment on December 6, 1999 through January 1, 2000, although she was only entitled to 90 hours of compensation for wage loss, totaling \$806.43. Appellant has not shown, nor does the record otherwise establish, that the Office erred in calculating the amount of the overpayment. Therefore, an overpayment of compensation in the amount of \$475.01 was created.¹

The Board further finds that the Office properly determined that appellant was not without fault in the creation of the overpayment.

In determining whether an individual is at fault, section 10.433(a) of the regulations provides in relevant part:

“A recipient, who has done any of the following will be found 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.”²

In this case, the Office applied the third standard -- appellant accepted payments which she knew or should have known to be incorrect -- in finding appellant to be at fault in the creation of the overpayment. She began receiving compensation on October 11, 1998 after being placed on the periodic roll. By letter (Form CA-1049) dated October 20, 1998, the Office advised appellant to notify the Office immediately upon a return to work to avoid an overpayment of compensation. On February 17, 1999 appellant signed a Form CA-1032, which advised her to notify the Office upon her return to employment. Appellant also submitted an October 22, 1998 check in the amount of \$1,610.00 to the Office. In an accompanying letter of the same date, appellant explained that she had received compensation after she quit her job at the employing establishment on August 1, 1998 and applied for unemployment benefits on

¹ The Board notes that the overpayment amount should be \$475.01 rather than \$475.02 as calculated by the Office. However, this mistake does not render the Office's determination that appellant received an overpayment of compensation as improper.

² 20 C.F.R. § 10.433(a)(1)-(3).

September 6, 1998. Appellant stated that she was only entitled to compensation for the period August 3 through September 6, 1998. She further stated that, "I would never take money that does not belong to me, so I am returning one-half of the check to the Office, which is \$1,610.00, approximately one month."

The Board finds that the Form CA-1049 and the signed Form CA-1032, together with appellant's October 22, 1998 check and letter, indicate that appellant knew or should have known the compensation she received after she returned to work on December 6, 1999 contained an amount to which she was not entitled.

Accordingly, the Board finds that the Office properly determined that appellant accepted compensation which she knew or should have known to be incorrect for the period December 6, 1999 through January 1, 2000 and, therefore, she was at fault in the creation of the overpayment during that period.

With respect to recovery of the overpayment, the Board notes its jurisdiction on appeal is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits under the Federal Employees' Compensation Act.³ As appellant is no longer receiving wage-loss compensation benefits, the Board does not have jurisdiction with respect to the Office's recovery of the overpayment under the Debt Recovery Act.⁴

The decision of the Office of Workers' Compensation Programs dated June 16, 2000 is hereby affirmed.

Dated, Washington, DC
June 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ *Lewis George*, 45 ECAB 144 (1993).

⁴ *Levon H. Knight*, 40 ECAB 658 (1989).