

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA W. THORNSBURY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Salem, VA

*Docket No. 00-2329; Submitted on the Record;
Issued November 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$1,275.61 for November 22 through December 4, 1999; (2) whether the Office properly determined that appellant was at fault in creation of the overpayment, which was, therefore, not subject to waiver of recovery.

On July 29, 1997 appellant, a 49-year-old registered nurse, injured her right shoulder when someone grabbed her right arm. Appellant filed a claim for benefits on July 30, 1997, which the Office accepted appellant's claim for right rotator cuff strain with subacromial bursitis. Appellant stopped working on the date of injury. The Office subsequently expanded the claim to include acute stress disorder, and the Office paid appropriate compensation.

By letter dated October 19, 1998, the Office notified appellant that "In order to avoid an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU RETURN TO WORK. Each payment made through the Office's automated system will include the period for which payment is made. If you have worked for any portion of this period, you must return the check to this Office. Otherwise, an overpayment of compensation may result." (Emphasis in the original.)

On November 22, 1999 appellant returned to work with the employing establishment.

By letter dated December 27, 1999, the Office made a preliminary determination that an overpayment of compensation had occurred in the amount of \$1,275.61, covering November 22, 1999 through December 4, 1999. The Office found that appellant was at fault in creating the overpayment because the October 19, 1998 letter advised her to return any check she received after she returned to work, and thus she should have known that she could not earn wages and receive compensation for total disability for the same period.

The Office informed appellant that if she disagreed with the decision she could, within 30 days, submit evidence or argument to the Office, or request a prerecoumpt hearing with the Branch of Hearings and Review.

Appellant completed and signed the enclosed Form OWCP-20, which was received by the Office on January 14, 2000. Appellant requested a prerecoumpt hearing, and the record indicates this request was also received on January 14, 2000.

By decision dated February 1, 2000, the Office found that appellant was at fault in creating the overpayment of compensation from November 22 through December 4, 1999, which amounted to \$1,275.61.

The Board finds that the case is not in posture for decision.

The instant record indicates that although appellant timely responded to the Office's December 27, 1999 preliminary determination that an overpayment had occurred by requesting a recoumpt hearing, the Office ignored this request and finalized its determination on February 1, 2000. The February 1, 2000 determination is therefore set aside so that the Office can schedule a recoumpt hearing on the issues of overpayment and fault.

The February 1, 2000 decision of the Office of Workers' Compensation Programs is therefore set aside and remanded in accordance with this opinion.

Dated, Washington, DC
November 2, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member