

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY BASKIN and DEPARTMENT OF THE NAVY,
NAVY PUBLIC WORKS CENTER, Norfolk, VA

*Docket No. 01-2081; Submitted on the Record;
Issued August 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$431.53; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment.

On February 4, 1999 appellant, then a 49-year-old welder leader, filed an occupational disease claim alleging that on September 14, 1998 he first realized that his "frozen" shoulder was caused or aggravated by factors of his employment.

By letter dated April 27, 1999, the Office accepted appellant's claim for adhesive capsulitis of the right shoulder and authorized subsequent shoulder surgeries.

The record reveals that appellant returned to full-time light-duty work at the employing establishment on July 10, 2000.

In a June 21, 2001 notice, the Office advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$431.53, which occurred because he received a compensation check for the period July 10 through 15, 2000, although he had returned to work on July 10, 2000 and had no wage loss thereafter. The Office further advised appellant that he was at fault in the creation of the overpayment because he had reason to know that he accepted an incorrect payment. In addition, the Office advised appellant that he could request a telephone conference, a final decision based on the written evidence only, or a hearing within 30 days of the date of this letter if he disagreed that the overpayment occurred, if he disagreed with the amount of the overpayment, if he believed that the overpayment occurred through no fault of his own and if he believed that recovery of the overpayment should be waived. The Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof.

By decision dated August 3, 2001, the Office finalized its preliminary determination regarding the amount of the overpayment and finding that appellant was at fault in the creation of the overpayment. In addition, the Office found that appellant failed to submit a completed overpayment questionnaire, and thus, ordered repayment of the overpayment amount in full.

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$431.53.

In this case, the record reveals that appellant returned to work for the employing establishment in a full-time light-duty capacity on July 10, 2000. The Office determined that appellant received a compensation check for the period July 10 through 15, 2000. Therefore, the Office properly found that an overpayment existed in the amount of \$431.53.

The Board further finds that the Office properly found that appellant was at fault in the creation of the overpayment.

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

“An individual is with fault in the creation of an overpayment who --

- (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 furnish 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 been expected to know was incorrect.”¹

In this case, the Office applied the third standard -- appellant accepted a payment which he knew or should have been expected to know was incorrect -- in finding appellant at fault in the creation of the overpayment in the amount of \$431.53. In a July 10, 2000 note to the Office, Vikki A. Marshall-Barnes, an employing establishment employee relations specialist, stated that appellant returned on that date with a medical document indicating his physical restrictions. Ms. Marshall-Barnes advised the Office that appellant should only be paid through July 9, 2000. Ms. Marshall-Barnes stated that the system showed that appellant would be paid through July 15, 2000 and requested correction of the period if possible. She further stated, “[Appellant] has been made aware that he will be indebted if he is paid through July 15, 2000.” Ms. Marshall-Barnes requested that “[I]f the period cannot be corrected please claim indebtedness as soon as possible.” Although the Office may have been negligent in continuing to issue appellant a compensation check after it was informed that appellant had returned to work and had earnings,

¹ 20 C.F.R. § 10.433(a) (2001).

this does not excuse appellant's acceptance of this check to which he should have been expected to know he was not entitled.²

The Board finds that Ms. Marshall-Barnes' July 10, 2000 note indicates that appellant knew or should have known that the compensation check he received after he returned to work on July 10, 2000 contained an amount to which he was not entitled. Her note indicates that appellant was advised of the indebtedness if paid through July 15, 2000. The Board finds that the facts of this case establish that appellant knew or should have been expected to know that he accepted an incorrect compensation payment in the amount of \$431.53 and, therefore, he was at fault in the creation of the overpayment during the period July 10 through 15, 2000.

The Board notes that its jurisdiction is limited to review of those cases where the Office seeks recovery from continuing compensation under the Federal Employees' Compensation Act.³ Appellant returned to work with no wage loss and was not in receipt of continuing compensation at the time the final decision was entered in this matter. Therefore, the Board lacks jurisdiction to review recovery of the overpayment.

The August 3, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

² *Lee B. Bass*, 40 ECAB 334 (1988); *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

³ *Lewis George*, 45 ECAB 144 (1993).