

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. SUMMERS and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 00-1119; Submitted on the Record;
Issued January 16, 2002*

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 an overpayment of compensation in the amount of \$1,050.23 occurred from September 8 to September 26, 1987; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment.

In this case, the Office accepted appellant's April 12, 1983 work-related injury of trapezius strain and herniated disc at C6-7. The Office also authorized anterior cervical fusion at C6-7 on August 27, 1985.

On May 19, 1987 appellant underwent additional authorized surgery performed by Dr. Frederick W. Pitts, appellant's treating Board-certified orthopedic surgeon, that included a cervical disc hemilaminectomy at C6-7 with foraminotomy and decompression of nerve root.

In a medical report dated August 17, 1987, Dr. Pitts stated that appellant could return to work on September 8, 1987.

On September 8, 1987 the employing establishment stated that appellant returned to work on that date with restrictions against lifting more than 25 pounds. The employing establishment noted in a box "modified duties for 10 days, no lifting over 25 pounds."

By letter dated October 29, 1987, appellant returned a compensation payment check for total disability for the time period of September 27 to October 24, 1987 for \$1,548.96. Appellant stated that he had returned to work during that time period.

In a report dated April 30, 1999, the Office determined that appellant was overpaid \$1,050.23 because he received compensation for disability from September 8 to 26, 1987, after

he had returned to work.¹ In an internal memorandum dated May 14, 1999, the Office determined that since appellant knew he had received a compensation check for a time when he was employed, September 8 to 26, 1987, he was at fault in creating the overpayment.

On May 28, 1999 appellant responded to the preliminary overpayment determination stating that he returned both of the checks “UNSIGNED to the Compensation Programs Office at the [employing establishment] within days of receiving them.” (Emphasis in the original). He went on to list three individuals by name who were working in that office at the time. The Office notified appellant that it had made a preliminary determination that he had been overpaid by \$1,050.23 and informed him of his rights regarding the overpayment, instructing him to submit the financial information requested on an accompanying overpayment questionnaire. Appellant returned the questionnaire on June 8, 1999. Appellant also submitted a supplemental report noting additional expenses associated with his position with the Marine Corps Logistics Base in Barstow, CA. In that response, appellant stated that he had returned two compensation checks the Office mailed him for time periods when he was working.

By decision dated December 27, 1999, the Office finalized its determination that appellant received an overpayment of compensation in the amount of \$1,050.23, that he was at fault in the creation of this overpayment and that but that waiver was not warranted as he was found to be at fault and as his monthly income exceeded his necessary living expenses. The Office noted that “it was true that that you returned a check dated October 24, 1987, but there is no record of a return of the September 26, 1987 check.”

The Board finds that the record does not support the Office’s finding that appellant was overpaid compensation. The record reveals a computer generated case history report dated April 27, 1999 which indicates that checks were prepared and sent to appellant covering August 30 to September 26, 1987 for \$1,548.96 and from September 27 to October 24, 1987 for the same amount. The check covering September 27 to October 24, 1987 is not in dispute. A daily computation log for general compensation data dated May 1, 1999 indicates that appellant was due \$498.73 for compensation from August 30 to September 7, 1987. The difference between the case history report check amount of \$1,548.96 and the amount appellant was due, which was \$498.73, was \$1,050.23. This is the overpayment amount that the Office alleged that appellant owed. However, appellant indicated that he had returned the checks, knowing that he had return to work and was not eligible for compensation. The record is devoid of proof that appellant cashed or otherwise accepted the check in question. This is important as appellant specifically asserted on May 28, 1999, that he returned both checks. Consequently, the Office has not established that appellant was overpaid \$1,050.23. Given the disposition of this case, the issue of whether appellant was at fault is moot.

¹ The Office’s work sheet noted that appellant was due compensation from August 30 to September 7, 1987 in the amount of \$498.73, but that he had been paid from August 30 to September 26, 1987 in the amount of \$1,551.60. The difference, \$1,050.23, was the amount overpaid from September 8 to September 26, 1987 minus a deduction credit.

The December 27, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
January 16, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member