

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM H. COLEMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Mansfield, TX

*Docket No. 02-1056; Submitted on the Record;  
Issued November 22, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant forfeited his right to compensation from May 23, 1999 to August 11, 2000; (2) whether an overpayment of \$38,001.71 in compensation occurred as a result; and (3) whether appellant was at fault in the creation of the overpayment.

On December 15, 1998 appellant, then a 53-year-old maintenance supervisor, filed a claim alleging he sustained an emotional condition as a result of a stressful work environment. The Office of Workers' Compensation Programs accepted that appellant sustained an adjustment disorder with depression and was paid appropriate compensation. Appellant stopped work on November 16, 1998 and did not return.

On February 2, 2000 appellant filed a CA-7, claim for compensation for lost wages beginning February 1999 to February 2000. The Office paid compensation for the period of February 9, 1999 to February 2000. The Office also noted that appellant was paid compensation for the period of December 11, 1998 to January 1, 1999. The record reflects that appellant worked intermittently in the private sector as a truck driver from July 1999 through July 2000.

In a decision dated June 6, 2000, the Office reduced appellant's monetary compensation effective May 21, 2000 based upon his actual earnings. The Office indicated that appellant was recently reemployed as a delivery driver with wages of \$520.00 per week effective May 8, 2000.

On August 11, 2000 appellant signed a Form CA-1032, certifying that he was not employed for the period of June 22 to July 2000. By signing the form, appellant acknowledged the following:

"I know that anyone who fraudulently conceals or fails to report income or other information which would have an effect on benefits, or who makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under the Federal Employees' Compensation Act may be subject to criminal prosecution, from which a fine or imprisonment, or both, may result.

“I understand that I must immediately report to [the Office] any improvement in my medical condition, any employment, any change in the status of claimed dependents, any third-party settlement and any change in income from [f]ederally assisted disability or benefit programs.”

Having received a completed Form CA-1032, the Office paid appellant’s compensation payments for total disability.<sup>1</sup>

The Office received an investigative package dated February 22, 2001 from the U.S. Department of Labor, Office of the Inspector General (OIG), Dallas, Texas. The OIG reported that appellant submitted a Form EN-1032 dated August 11, 2000 where he reported employment and earnings with McKesson HBOC Medical Group as a delivery driver where he had been employed from March 8 to June 21, 2000. Appellant reported he was unemployed from June 22 to July 2000. The OIG secured appellant’s employment records from American Security Services which revealed that appellant was employed for various time periods from 1990 to 2000, specifically from May 8 to July 11, 2000 where he earned \$1,811.25. The OIG provided a daily sign in sheet provided by appellant’s employer indicating specific dates he signed in and signed out, where appellant signed his name verifying his worksheet. The OIG noted that on January 8, 2001 appellant was interviewed and stated that he reported all of his income to the Department of Labor either directly or indirectly through his representative, Ed Daniels. He stated that he had worked for American Commercial Security intermittently for the past couple of years. Appellant indicated that, if he failed to report his employment with American Commercial Security, it was not intentional.

In a decision dated July 18, 2001, the Office found that appellant had forfeited his entitlement to compensation because he knowingly failed to report earnings on CA-1032 forms. The Office determined that the evidence submitted by the OIG revealed that appellant was employed during the period of June 22 to July 2000, the period in which appellant indicated on the CA-1032 form that he was unemployed. The Office determined that appellant therefore forfeited his right to compensation for the 15-month period covered by the CA-1032, May 23, 1999 to August 11, 2000.

Also on July 19, 2001 the Office made a preliminary determination that an overpayment of \$38,013.59 in compensation occurred in appellant’s case because of the following: “You received compensation for total disability for the period of June 22 to July 2000 when you were working.” The Office found that appellant was at fault in the matter for the following reasons:

“You accepted payments which you knew, or should reasonably have known to be incorrect as a result of your working for the period that compensation was paid from June 22 to July 2000.”

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<sup>1</sup> On December 8, 2000 appellant was offered a position as a modified supervisor effective December 16, 2000. In a letter dated December 20, 2000, the Office notified appellant that he had 30 days within which to accept the job offer or provide an explanation of the reason for refusing it or his compensation would be terminated. On January 23, 2001 the Office issued appellant a letter indicating that he did not respond to the previous letter and was granted an additional 15 days to respond to the job offer. Thereafter appellant submitted medical documentation in support of his refusal to accept the job offer. In a decision dated February 8, 2001, the Office found that appellant refused suitable employment and his compensation would be terminated effective February 8, 2001.

In a memorandum dated July 19, 2001, the Office found that appellant was at fault in the matter of the overpayment because he “accepted payments, which he knew or should have reasonably known, to be incorrect. He is considered to be at fault because he knew that he was working and received compensation for total disability for the period of June 22 through July 2000. Therefore, the claimant has forfeited compensation received 15 months prior to his signing the CA-1032 form on August 11, 2000.” The Office concluded that appellant incurred an overpayment of \$38,001.71 because he accepted payment, which he knew or should have known, to be incorrect.

In a decision dated August 27, 2001, the Office finalized its preliminary determination. The Office found that an overpayment of \$38,001.71 occurred in appellant’s case because of the following: “You received compensation for total disability for the period of June 22 to July 2000 when you were working.” The Office found that appellant was at fault in the matter of the overpayment for the following reasons:

“You accepted payments which you knew, or should reasonably have known to be incorrect as a result of your working for the period that compensation was paid from June 22 to July 2000.”

The Board finds that appellant forfeited his right to compensation from May 23, 1999 to August 11, 2000.

Section 8106(b) of the Act provides in pertinent part:

“An employee who --

(1) fails to make an affidavit or report when required; or

(2) knowingly omits or understates any part of his earnings; forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under [section] 8129 of this title [recovery of overpayments], unless recovery is waived under that section.”<sup>2</sup>

The CA-1032 form dated August 11, 2000 that appellant signed specifically indicated that he was unemployed from June 22 to July 2000. He represented on these forms that he had employment and earnings with McKesson HBOC Medical Group as a delivery driver where he had been employed from March 8 to June 21, 2000. Appellant specifically reported he was unemployed from June 22 to July 2000. The record shows otherwise. The investigative package received from the OIG well documents appellant’s employment with American Security Services which revealed that appellant was employed for various time periods from 1990 to 2000,

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<sup>2</sup> 5 U.S.C. § 8106(b).

specifically from May 8 to July 11, 2000 where he earned \$1,811.25 during the period covered by the last CA-1032 form, signed August 11, 2000.<sup>3</sup>

As appellant had earnings during this period, the question for determination is whether he knowingly omitted or understated any part of his earnings.

The OIG investigation documents that appellant knowingly omitted or understated his earnings on the first two forms. The OIG reported that appellant submitted a Form EN-1032 dated August 11, 2000 where he reported employment and earnings with McKesson HBOC Medical Group as a delivery driver where he had been employed from March 8 to June 21, 2000. Appellant reported he was unemployed from June 22 to July 2000. The OIG secured appellant's employment records from American Security Services which revealed that appellant was employed for various time periods from 1990 to 2000, specifically from May 8 to July 11, 2000 where he earned \$1,811.25. The OIG provided a daily sign-in sheet provided by appellant's employer indicating specific dates he signed in and signed out, where appellant signed his name verifying his worksheet. The OIG noted that on January 8, 2001 appellant was interviewed and stated that he reported all of his income to the Department of Labor either directly or indirectly through his representative Ed Daniels. He stated that he had worked for American Commercial Security intermittently for the past couple of years. Appellant indicated that, if he failed to report his employment with American Commercial Security it was not intentional. The Board, therefore, finds that appellant knowingly omitted or understated his earnings for the period June 22 to July 2000, in violation of 5 U.S.C. § 8106(b) and thereby forfeited the total amount of compensation he received for that period. There is no medical evidence in the record to suggest that appellant was mentally incapacitated when he signed this form or that he was otherwise incompetent to handle his affairs. Under the circumstances, the Board finds that appellant knowingly omitted or understated his earnings for the period June 22 to July 2000, in violation of 5 U.S.C. § 8106(b) and, thereby, forfeited the total amount of compensation he received for that period.

The Board also finds that an overpayment of \$38,001.71 in compensation occurred as a result of the forfeiture.

On February 9, 2001 the Office generated a computer printout of appellant's pay rate. Appellant forfeited his right to this compensation, creating the overpayment found in this case.

The Board also finds that appellant was at fault in the creation of the overpayment.

Section 8129 of the Act provides that an overpayment of compensation shall be recovered by the Office unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience."<sup>4</sup>

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<sup>3</sup> See *Alan L. Trindle, Sr.*, 53 ECAB \_\_ (Docket No. 00-2577, issued April 9, 2002).

<sup>4</sup> 5 U.S.C. § 8129.

Thus, 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 payments he or she received from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events that 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).<sup>5</sup>

The Office found that appellant was at fault in creating the overpayment under the third criteria above. The Office found that appellant knew or reasonably should have known that he could not receive compensation for total disability while at the same time working and earning wages. The Office also found that appellant knowingly omitted earnings information on CA-1032 forms and thereby forfeited his right to all monetary compensation. Appellant is at fault because he failed to provide information that he knew or should have known to be material. On the CA-1032 forms, the Office advised as follows:

“The information requested in this letter is required in connection with your benefits under the Act, 5 U.S.C. § 8101 *et seq.* This information will be used to decide whether you are entitled to continue receiving these benefits, or whether your benefits should be adjusted.”

Appellant, therefore, knew or should have known that his statement that he was unemployed from June 22 to July 2000 was material to his entitlement to benefits. Appellant’s failure to provide this material information on his CA-1032 forms establishes fault in the creation of the overpayment that occurred through August 11, 2000, the date of his last Form CA-1032.

Whether or not the Office determines that an individual was at fault with respect to 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.<sup>6</sup> Under the circumstances of this case, the Office properly found that appellant was at fault in the creation of the overpayment.<sup>7</sup>

The Board’s jurisdiction to review the collection of an overpayment is limited to cases of adjustment, where the Office decreases later payments of compensation to which the individual is entitled.<sup>8</sup> In this case, appellant is no longer entitled to compensation for wage loss because he was terminated February 8, 2001 for refusal to accept suitable employment. As the Office is not

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<sup>5</sup> 20 C.F.R. § 10.433(a).

<sup>6</sup> 20 C.F.R. § 10.433(b).

<sup>7</sup> 20 C.F.R. § 10.433(a).

<sup>8</sup> 5 U.S.C. § 8129; *Levon H. Knight*, 40 ECAB 658 (1989).

seeking recovery from continuing payments of compensation, the Board lacks jurisdiction to review the collection of the overpayment.

The August 27 and July 18, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
November 22, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member