

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONICA M. FRECHETTE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, MA

*Docket No. 02-1408; Submitted on the Record;
Issued October 8, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$7,714.57; and (2) whether appellant was with fault in the creation of the overpayment, thus precluding waiver of recovery.

On April 1, 1998 appellant, then a 44-year-old postal clerk, filed a notice of traumatic injury alleging that on that same day she was attempting to brace a very heavy bundle of mail that was tipping towards her and she injured her right shoulder. The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder strain and right sprain of the ribs. The accepted claim was later expanded to include subacromial decompression with mini rotator cuff tear. Appellant returned to limited duty on July 24, 2000 for four hours per day and started receiving compensation for partial disability.

Appellant resigned from the federal government on September 10, 2000 and began working as an executive secretary for a private company beginning September 18, 2000, earning \$40,000.00 per year or \$769.23 per week. She continued to receive compensation benefits for partial disability through March 24, 2001.

In a letter dated January 10, 2001, appellant stated:

"I want to thank you for the good news regarding me being allowed to keep the checks that had been processed to me. I still do not quite understand how that works but it was indeed very good news so close to the holidays."

By decision dated April 3, 2001, the Office found that appellant was overpaid for the period of September 18, 2000 to March 24, 2001. Appellant had a telephone conference with the district Office and claimed that someone from the Office told her that she could cash the over paid compensation checks.

By decision dated April 5, 2002, the Office found that an overpayment of \$7,714.57 occurred in appellant's case because she received compensation for partial disability through March 24, 2001 after returning to full-time duty work on September 18, 2000. The Office found that appellant was at fault in the creation of the overpayment since she "knew or should have reasonably known" that she was being overpaid, given her return to full-time duty in the private sector.

The Board finds that appellant received an overpayment of compensation in the amount of \$7,714.57 for the period of September 18, 2000 to March 24, 2001.

The primary purpose of workers' compensation is to provide an adequate substitute for an employee's work-related loss of wage-earning capacity. When an employee returns to work and resumes earning wages the same or greater than those earned before, the work-injury compensation is no longer payable.¹

The record establishes, and appellant does not dispute, that she began full-time work in the private sector on September 18, 2000. Office computer records establish that appellant received compensation for partial disability while working full time until March 24, 2001. Appellant's receipt of compensation for loss of wage-earning capacity should have stopped on September 18, 2000 when she began her full-time job. Appellant has submitted no evidence that she did not receive an overpayment of compensation. On the contrary, in her January 10, 2001 letter she implies that she received excess monies and stated that she was delighted, even though she did not understand why she was able to cash the checks. Thus, the Office properly determined that she received an overpayment of compensation during the period in question.

The Board further finds that appellant was at fault in creating the overpayment, which is, therefore, not subject to waiver of recovery.

Section 8129(a) of the Federal Employees' Compensation Act² provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b):

"Adjustment or recovery by the United States may not be made when 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."³

No waiver of overpayment is possible if the claimant is not "without fault" in helping to create the overpayment.

¹ *Chauncey L. Moore*, 34 ECAB 553 (1983).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8129.

In determining whether an individual is not “without fault” or alternatively, “with fault,” section 10.433 of Title 20 of the Code of Federal Regulations states in pertinent part:

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

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have know to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.”⁴

The Office properly found that appellant was at fault in the overpayment of compensation because she accepted payments which she knew or should have been expected to know were incorrect. The information sheets accompanying the Office’s benefit statements and payment of compensation clearly advised her of the process regarding overpayments. The letters state:

“To avoid an overpayment of compensation, advise [the Office] right away when you return to full-time or part-time work with either a government or private employer. Return to [the Office] any compensation checks received after you go back to work.”

Given this notification by the Office, appellant knew or should have known that when she returned to full-time work on September 18, 2000 she was no longer entitled to wage-loss compensation and should have returned the compensation checks received from September 18, 2000 through March 24, 2001. Appellant’s contention that an employee from the Office told her that she could cash the checks is an insufficient excuse to find appellant not at fault.

⁴ 20 C.F.R. § 10.433(a).

The April 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 8, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member