

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDY WDOWIAK and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

*Docket No. 03-1; Submitted on the Record;
Issued March 5, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$32,915.95 for the period of September 29, 1994 through May 5, 1997 as he forfeited his compensation benefits for this period.

This case has previously been before the Board on appeal. In a January 20, 2000 decision,¹ the Board found that the Office met its burden of proof to terminate appellant's compensation benefits, that appellant forfeited his right to monetary compensation from September 29, 1994 to May 5, 1997 and that appellant was at fault in the resulting overpayment of \$24,308.77. The facts and circumstances of the Board's prior decisions are adopted herein by reference.²

Following the Board's January 20, 2000 decision, the Office issued an amended decision on June 6, 2000 finding that the correct amount of overpayment received from September 29, 1994 through May 5, 1997 was \$32,915.95. Appellant appealed this decision to the Board on August 20, 2000. In an order remanding case dated June 6, 2002,³ the Board found that the Office failed to provide any supporting rationale explaining why the original overpayment amount was incorrect and how it was recalculated. The Board remanded the case to the Office for a *de novo* determination regarding the amount of the overpayment.

¹ Docket No. 98-499.

² The Board issued a decision on July 23, 2002 addressing an additional period of overpayment from September 24, 1993 to September 28, 1994. Docket No. 01-622.

³ Docket No. 00-2704.

By decision dated August 5, 2002, the Office issued a *de novo* decision finding that appellant had received an overpayment in the amount of \$32,915.95 for the period September 29, 1994 to May 5, 1997.

The Board finds that appellant received an overpayment in the amount of \$32,915.95.

The employing establishment terminated appellant on June 30, 1992. The record establishes that appellant earned \$7.00 per hour at the time he became aware of his injury on July 6, 1992. Appellant also received a 10 percent night differential for 7 hours per day. The Office determined that appellant's weekly salary was \$304.50 and paid him compensation based on this pay rate. Appellant received compensation at the augmented rate of three-fourths of his pay as he had dependants.

The Office terminated appellant's compensation on September 23, 1993. The Board reversed this decision. The record establishes that the Office determined that appellant was entitled to compensation in the amount of \$27,103.58 for the period September 24, 1993 to December 9, 1995. However, the Office reduced this amount by \$16,959.78 due to a prior overpayment. Appellant received retroactive compensation in the amount of \$10,143.80 for the period September 24, 1993 to December 9, 1995 on December 15, 1995. From December 10, 1995 to March 2, 1996 appellant received \$961.00 every 28 days. He received \$1.71 for March 1 and March 2, 1996 and then received \$985.00 every 28 days from March 3, 1996 through March 1, 1997. He received \$1.18 on March 1, 1997 and from March 2, 1997 to May 24, 1997 he received \$1,018.00 every 28 days.

The Office properly determined that appellant received compensation in the amount of \$234.00 or $\frac{3}{4}$ of \$304.50 for 153 days from September 29, 1994 to February 28, 1995 for a total of \$5,114.57. Appellant received a cost-of-living increase on March 1, 1995 resulting in increased compensation to \$240.25 for 366 days from March 1, 1995 to February 29, 1996 for a total of \$12,561.64. Appellant received a second cost-of-living increase on March 1, 1996 resulting in increased compensation to \$246.25 for 365 days from March 1, 1996 to February 28, 1997 in the amount of \$12,840.17. Appellant received his final cost-of-living increase on March 1, 1997 resulting in compensation in the amount of \$254.50 for the 66-day period March 1 to May 5, 1997 in the amount of \$2,399.57. Therefore, for the total period of forfeiture in question, appellant received compensation in the amount of \$32,915.95.

As the Office properly utilized the proper pay rate in determining appellant's compensation benefits and when determining overpayment, the Board finds that the Office accurately determined that appellant received an overpayment of compensation in the amount of \$32,915.95 for the period September 29, 1994 through May 5, 1997.

The Board has already determined that appellant was at fault in the creation of the overpayment and that it does not have jurisdiction over the collection of the overpayment as appellant is no longer receiving compensation benefits.

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

Dated, Washington, DC
March 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member