

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDREW R. SCHWARZ and U.S. POSTAL SERVICE,  
POST OFFICE, Little Silver, NJ

*Docket No. 03-399; Submitted on the Record;  
Issued March 10, 2003*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$806.06 for the period August 26 to September 7, 2002; and (2) whether the Office properly determined that appellant was at fault in creating the overpayment.

On September 9, 2002 the Office advised appellant that he had received an overpayment of benefits in the amount of \$806.06. The Office explained that the overpayment resulted from appellant's receipt of disability compensation following his return to full-time work on August 26, 2002. The Office found appellant at fault in creating the overpayment.

In a letter dated September 14, 2002, appellant contended that he was not at fault in creating the overpayment because he promptly advised the Office of his return to duty on August 26, 2002. Appellant also requested a waiver of recovery of the overpayment and he submitted an overpayment recovery questionnaire (Form OWCP-20).

By decision dated November 15, 2002, the Office found that appellant received an overpayment of compensation in the amount of \$806.06 and that he was at fault in creating the overpayment. The Office explained that appellant was properly notified of his obligation to return any checks issued to him after his return to work and that he failed to return the compensation check issued on or about September 7, 2002, thereby creating the overpayment.

The Board finds that appellant received an overpayment in the amount of \$806.06.

By letter dated August 26, 2002, appellant advised the Office that he had returned to work that day at full pay. Additionally, he requested an adjustment of his disability check to reflect his return to work. Although the Office received appellant's letter on August 30, 2002, his final periodic compensation payment was not adjusted to reflect his return to work on August 26, 2002. The record indicates that he received disability compensation in the amount of \$1,733.04 for the period of August 11 to September 7, 2002. The Office later determined that

appellant was only entitled to \$926.98 for the period August 11 to 25, 2002. Therefore, appellant was overcompensated in the amount of \$806.06 for the period August 26 to September 7, 2002. Accordingly, the Office's determination of the amount of the overpayment is proper and is supported by the evidence of record.

The Board also finds that the Office properly determined that appellant was at fault with respect to creating the overpayment.

Under section 8129 of the Federal Employees' Compensation Act and the implementing regulations, an overpayment must be recovered 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>1</sup>

Section 10.433 of the implementing regulations specifically provides that the Office may consider waving an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.<sup>2</sup> The regulation further provides that each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from the Office are proper.<sup>3</sup> Under the regulations a recipient will be found to be at fault with respect to creating an overpayment if the recipient "[a]ccepted a payment which he or she knew or should have known to be incorrect."<sup>4</sup>

The record includes an August 3, 2002 acknowledgement by appellant of his responsibilities as a compensation recipient. Item number eight on Form EN1049 sets forth one's reporting obligation with respect to a return to work and item number nine pertains to overpayments. Item nine states as follows:

"To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. Each payment shows the period for which the payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised [the Office] that you are working."

While appellant timely advised the Office of his return to work on August 26, 2002, he did not return his last compensation check, which included payment for a period of time after he returned to work. In his September 14, 2002 letter to the Office, appellant stated that he complied with all notification provisions and felt that the Office had sufficient time to make the appropriate adjustment of compensation. He reportedly was at work when the check arrived and his wife, who was aware that he had notified the Office and requested an adjustment, cashed the check as she felt the adjustment had been made.

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<sup>1</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437 (1999).

<sup>2</sup> 20 C.F.R. § 10.433(a) (1999).

<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 10.433(a)(3) (1999).

In the instant case, appellant accepted a payment that he knew or should have known to be incorrect.<sup>5</sup> He did not take all reasonable measures to ensure that the final payment he received from the Office was proper. The Form EN1049 appellant signed on August 3, 2002 clearly advised him that each payment indicated the period for which the payment was made and if he “worked for any portion of this period,” he should return the payment to the office. He admittedly did not even inspect his final check to determine if the period of compensation and the amount received were correct. Under the circumstances, the Office properly determined that appellant was at fault in creating the overpayment.

The November 15, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 10, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> 20 C.F.R. § 10.433(a)(3) (1999).