

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**LEOTIS HALL, Appellant**

**and**

**GOVERNMENT PRINTING OFFICE,  
Washington, DC, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 02-2140  
Issued February 5, 2004**

*Appearances:*  
*Leotis Hall, pro se*  
*Julia Mankata-Tamakloe, Esq., for the Director*

*Oral Argument Held January 13, 2004*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 16, 2002 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 2, 2002 finding an overpayment of compensation. Pursuant to 20 C.F.R. §§ 10.501.2(c) and 501.3, the Board has jurisdiction over the overpayment issue in this case.

**ISSUE**

The issue is whether appellant is at fault in the creation of a \$1,852.86 overpayment of compensation from January 5 to 29, 2000, thus precluding consideration of waiver of recovery of the overpayment.

**FACTUAL HISTORY**

On March 12, 1999 appellant, then a 47-year-old printing plant worker, filed a traumatic injury claim alleging that he injured his left wrist on March 8, 1999 in the performance of duty. He underwent surgery on August 26, 1999.

On June 9, 1999 the Office advised appellant of its acceptance of his claim for tenosynovitis and provided information on filing a claim for compensation for lost wages. The Office notified appellant of the following:

“RETURN TO DUTY. If you obtain or return to any employment, you should notify this Office immediately. You are not permitted to receive payments for temporary total disability while employed. If you receive any compensation checks which include payment for any period you have worked, you should return them to us immediately to prevent an overpayment....”

By letter dated January 19, 2000, the employing establishment advised the Office that appellant returned to work on January 5, 2000.

The record contains an Office case history inquiry report showing that on January 29, 2000 a direct deposit of \$2,191.40 was made to appellant’s bank account representing a compensation check for wage loss for the period January 2 to 29, 2000.

On February 23, 2000 the Office made a preliminary finding that an overpayment of \$1,852.86 had occurred in appellant’s case because he returned to work on January 5, 2000 and continued to receive compensation for temporary total disability through January 29, 2000. The Office also made a preliminary finding that appellant was at fault in the matter for the following reason: “You knew or should have known you were not entitled to receive compensation for wage loss after you returned to work.” The Office advised appellant of his right to submit evidence or argument if he disagreed with the fact or amount of the overpayment or believed that he was not at fault and wished to request waiver of recovery of the overpayment.

Appellant submitted a completed overpayment recovery questionnaire and indicated that he believed he was not at fault in creating the overpayment. He requested a prerecoupment hearing.<sup>1</sup>

By decision dated and finalized July 2, 2002, an Office hearing representative affirmed the Office’s February 23, 2000 preliminary decision.

### **LEGAL PRECEDENT**

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 receives from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events which 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

---

<sup>1</sup> The record reflects that a hearing was scheduled but appellant did not attend. The hearing representative made a review of the written record.

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>2</sup>

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>3</sup>

### ANALYSIS

An overpayment occurred in this case when appellant returned to work on January 5, 2000 but received compensation for temporary total disability for the period January 5 to 29, 2000. The compensation check dated January 29, 2000 thus covered two periods: a period of total disability through January 4, 2000, for which appellant remained entitled to compensation, and a period of employment from January 5 to 29, 2000 for which he was not entitled to compensation. It is during this latter period that the overpayment occurred in the amount of \$1,852.86.

The Office found that appellant was at fault in the creation of the overpayment based on the third criterion above, that he accepted a payment which he knew or should have known to be incorrect. In order for the Office to establish that appellant was at fault in creating the overpayment, the Office must show that, at the time appellant received the compensation checks in question, he knew or should have known that the payment was incorrect.<sup>4</sup> This case, however, is distinguishable from those in which a claimant returns to work, subsequently receives a compensation check in the mail covering a period of employment, knows or should know that he is not entitled to such compensation but decides nonetheless to cash or deposit the check. In such cases the cashing or depositing of the check has established the acceptance necessary under the third criterion above.<sup>5</sup> In this case, appellant authorized the Office to deposit his compensation check directly to his bank account. After appellant returned to work on January 5, 2000 he received no check in the mail. Under the facts of this case, appellant had no opportunity to make a decision on the January 29, 2000 check before it was deposited to his account.<sup>6</sup>

---

<sup>2</sup> 20 C.F.R. § 10.433(a).

<sup>3</sup> 20 C.F.R. § 10.433(b).

<sup>4</sup> *Robin O. Porter*, 40 ECAB 421 (1989).

<sup>5</sup> *E.g., Gerald A. Karth*, 36 ECAB 503 (1985) (holding that the claimant had an obligation to return any checks to the Office after his return to work).

<sup>6</sup> *William F. Salmonson*, 54 ECAB \_\_\_\_ (Docket No. 02-1448, issued October 9, 2002). *C.f., George A. Hirsch*, 47 ECAB 520 (1996). In *Hirsch* the claimant received direct deposit of his compensation but reviewed his monthly credit union statements and made notes on the nature of the transactions, indicating "that he reviewed these monthly reports with some degree of comprehension." The Board held that the claimant was at fault in creating the overpayment because he knew or should have known that he received incorrect payments.

**CONCLUSION**

The Board finds that under the circumstances of this case the Office has not presented sufficient evidence to establish that appellant accepted a payment which he knew or should have known to be incorrect. The Board will, therefore, reverse the Office's finding of fault and remand the case to the Office for further development and a final decision on the issue of waiver.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 2, 2002 is reversed in part and the case remanded for further action consistent with this opinion.

Issued: February 5, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member