

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

WILLIE A. WILLIAMS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL, Employer**

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**Docket No. 04-957
Issued: September 23, 2004**

Appearances:
Willie A. Williams, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 24, 2004 appellant filed a timely appeal from the November 14, 2003 merit decision of the Office of Workers' Compensation Programs, which found her at fault in the creation of an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's overpayment decision.

ISSUES

The issues are: (1) whether appellant received an overpayment of \$8,725.53 in compensation from December 4, 2002 to April 19, 2003; and if so, (2) whether she was at fault in the creation of the overpayment, thereby precluding waiver.

FACTUAL HISTORY

On July 23, 1998 appellant, then a 45-year-old mail processor, filed a claim alleging that the small partial tear or focal tendinitis in her right shoulder was the result of her federal employment. The Office accepted her claim for internal derangement of the right shoulder and

authorized an arthroscopic repair.¹ She received a schedule award from April 16 to May 29, 1999 for a two percent permanent impairment of her right arm.

Beginning August 11, 2002 appellant received compensation for temporary total disability on the periodic rolls. In a letter dated August 12, 2002, the Office notified appellant as follows:

“OVERPAYMENTS. 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 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.” (Emphasis in the original.)

Appellant returned to full-time limited duty on December 4, 2002 but continued to receive compensation for total disability wage loss on the periodic rolls. On May 6, 2003 the employing establishment advised the Office that appellant had returned to work but was still receiving compensation. The Office deleted appellant from the periodic rolls effective April 20, 2003.

On July 22, 2003 the Office made a preliminary determination that an overpayment of \$8,725.53 in compensation occurred because appellant was paid compensation for total disability from December 4, 2002 to April 19, 2003 after she returned to full-time limited duty on December 4, 2002. The Office also made a preliminary determination that she was at fault in the matter: “You failed to notify this Office that you returned to work on December 4, 2002. Further, you knew or should have reasonably known that you were not entitled to disability compensation while working full time.”

On August 18, 2003 appellant requested a telephone conference on the issues of fault and possible waiver. In a letter dated September 16, 2003, the Office informed appellant that it twice attempted to reach her by telephone to schedule a telephone conference. The Office advised as follows: “Please call me at the telephone number above to arrange the conference at a date and time that is convenient for you. Please also complete and return the enclosed Financial Worksheet/Questionnaire (Form OWCP-20) so that it may be reviewed prior to the conference.” The record shows no response by appellant.²

In a decision dated November 14, 2003, the Office finalized its preliminary determinations that appellant received an overpayment of \$8,725.53 in compensation from December 4, 2002 to April 19, 2003 and that she was at fault in the matter. The Office advised appellant that she could repay the debt by forwarding a check in the amount of \$8,725.53 within

¹ The Office eventually approved appellant’s claim for internal derangement of the right shoulder, right lateral epicondylitis and right rotator cuff syndrome with multiple surgeries, including two right shoulder arthroscopies and right tendon repair.

² The appearance in the case record of a properly addressed copy of the Office’s September 16, 2003 letter, together with the mailing custom or practice of the Office itself, raises the presumption that appellant received the original. *Larry L. Hill*, 42 ECAB 596 (1991).

30 days or contact the Office to make appropriate arrangements for recovery, such as installment payments.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for disability of an employee resulting from personal injury sustained while in the performance of duty.³ Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴ Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury.⁵ No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.⁶

ANALYSIS -- ISSUE 1

The evidence establishes that appellant received an overpayment of compensation. She returned to work on December 4, 2002, and although she was working full time, she continued to receive compensation for temporary total disability, as though she had no capacity to perform any gainful employment. Because she was not entitled to this compensation, an overpayment began on December 4, 2002 and continued through April 19, 2003, when the Office deleted her from the periodic rolls.

A computer printout of the payment history shows that appellant received five checks covering the period December 1, 2002 to April 19, 2003 and totaling \$8,902.30 in compensation. Subtracting the three days of compensation to which she was entitled from December 1 to 3, 2002, the overpayment amounts to \$8,725.53. The Board will affirm the Office's November 14, 2003 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

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 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 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

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

⁵ *Id.* at § 10.400(b).

⁶ *Id.* at § 10.515(a).

to the overpaid individual). The fact that the Office may have erred in making the overpayment does not by itself relieve the individual who received the overpayment from liability for repayment if the individual was also at fault in accepting the overpayment.⁷

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.⁸

ANALYSIS -- ISSUE 2

The Office determined that appellant was at fault under the second and third criteria above: "You failed to notify this Office that you returned to work on December 4, 2002. Further, you knew or should have reasonably known that you were not entitled to disability compensation while working full time." When she began receiving compensation for temporary total disability on August 11, 2002, the Office informed her that she should notify the Office immediately when she went back to work "to minimize the possibility of an overpayment of compensation." The Office explained to her that each payment she received would show the period covered by the check, so that, if she worked for any portion of that period, she was to return the payment to the Office. Under these circumstances, the Board finds that appellant was well informed of her responsibility to report her return to work on December 4, 2002. Because she did not do so, and because the Office's August 12, 2002 letter made clear how material this information was to the continuing payment of compensation, the Board finds that appellant was at fault in the matter of the overpayment for failing to provide information that she knew or should have known was material. The Board will affirm the Office's November 14, 2003 decision on the issue of fault.

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.⁹ As appellant was at fault in this case, the Office may not waive the overpayment; it must be recovered.¹⁰

CONCLUSION

The Board finds that appellant received an overpayment of \$8,725.53 in compensation from December 4, 2002 to April 19, 2003 and that she was at fault in the creation of the overpayment, thereby precluding waiver.

⁷ *Id.* at § 10.433(a).

⁸ *Id.* at § 10.433(b).

⁹ *Id.* at § 10.433(a).

¹⁰ 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. 5 U.S.C. § 8129; *Levon H. Knight*, 40 ECAB 658 (1989). The Board has no such jurisdiction in this case, where the Office has requested that appellant repay the debt by forwarding a check in the amount of \$8,725.53 within 30 days or contact the Office to make appropriate arrangements for recovery, such as installment payments.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member