



lumbar laminectomy at L5-S1, which appellant underwent on August 4, 2003. Appellant's surgeon anticipated a six- to eight-week recovery period following surgery. The Office placed appellant on the periodic compensation rolls effective August 10, 2003. He returned to his regular duties without restriction on October 7, 2003. Appellant, however, continued to receive wage-loss compensation for total disability following his October 7, 2003 return to duty. He later returned two compensation checks covering the period November 30, 2003 to January 24, 2004.

On March 26, 2004 the Office advised appellant that he received an overpayment of benefits in the amount of \$4,269.16 for the period October 7 to November 29, 2003. The Office explained that the overpayment resulted from appellant's receipt of disability compensation after he returned to work on October 7, 2003. The Office further advised appellant that he was at fault in creating the overpayment. On April 15, 2004 appellant challenged the Office's preliminary finding of fault. The Office issued a final overpayment decision on August 3, 2004 which found appellant at fault in creating the \$4,269.16 overpayment.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained in the performance of duty.<sup>1</sup> Section 8116(a) of the Act provides that an employee who is receiving compensation for an employment injury may not receive wages for the same time period.<sup>2</sup> When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made by decreasing later payments to which the individual is entitled.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

Appellant returned to his full-time, regular duties on October 7, 2003. On November 1, 2003 the Office paid appellant \$2,213.64 for the period October 5 to November 1, 2003. Appellant received another payment of \$2,213.64 on November 29, 2003, which covered the period November 2 to 29, 2003.<sup>4</sup> Because appellant did not experience any loss of wages upon returning to work on October 7, 2003, he was not entitled to continued wage-loss compensation. The Office's November 1, 2003 payment covered a partial period when appellant was entitled to wage-loss compensation. The Office deducted appellant's compensation for October 5 to 6, 2003 and correctly determined that he received an overpayment of \$4,269.16 for the period October 7 to November 29, 2003. Accordingly, the Office's determination of the amount of the overpayment is proper and supported by the evidence of record.

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> 5 U.S.C. § 8116(a); *Kenneth E. Rush*, 51 ECAB 116, 117 (1999).

<sup>3</sup> 5 U.S.C. § 8129(a).

<sup>4</sup> Appellant received two additional checks on December 27, 2003 and January 24, 2004, however, he returned those checks to the Office.

## LEGAL PRECEDENT -- ISSUE 2

Pursuant to section 8129 of the 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>5</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>6</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>7</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>8</sup>

## ANALYSIS -- ISSUE 2

The Office found that appellant was at fault in accepting the overpayment because he knew or should have known that he was not entitled to compensation for total disability following his October 7, 2003 return to work. On August 15, 2003 the Office informed appellant that he was entitled to wage-loss compensation beginning August 4, 2003. The Office placed him on the periodic compensation rolls and also explained that compensation would be terminated without further notice whenever the Office received information that appellant had earnings equal to or greater than the wages being paid for his date-of-injury job. The Office’s August 15, 2003 letter also stated that, in order to avoid an overpayment of compensation, appellant should notify the Office immediately when he returned to work. The letter further indicated that each payment would include the period for which payment was being made and if appellant worked for any portion of this period, he must return the check otherwise an overpayment of compensation would occur. In his April 15, 2004 response to the preliminary overpayment determination, appellant claimed that he had not received the Office’s August 15, 2003 letter and he was not aware that he had to personally notify the Office of his return to duty. However, the record includes appellant’s August 22, 2003 signed acknowledgement of his understanding of the rights and responsibilities concerning his receipt of wage-loss compensation. The record establishes that appellant accepted a payment that he knew or should have known to be incorrect.<sup>9</sup> Therefore, the Board finds that appellant was not without fault in accepting or creating the overpayment.

Regarding the repayment of the overpayment of compensation, the Board’s jurisdiction is limited to review of those cases where the Office seeks recovery from continuing compensation benefits under the Act. In this case, the claimant is no longer receiving wage-loss compensation,

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

<sup>6</sup> 20 C.F.R. § 10.433(a) (1999).

<sup>7</sup> *Id.*

<sup>8</sup> 20 C.F.R. § 10.433(a)(3) (1999).

<sup>9</sup> 20 C.F.R. § 10.433(a)(3) (1999).

therefore, the Board does not have jurisdiction with respect to recovery of the overpayment under the Debt Collection Act.<sup>10</sup>

**CONCLUSION**

The Board finds that appellant received an overpayment in the amount of \$4,269.16 and he was at fault in accepting the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> See *Robert S. Luciano*, 47 ECAB 793 (1996).