

of whether appellant's actual earnings for the period May 9, 1986 through September 30, 1995 fairly and reasonably represented his wage-earning capacity, prior to issuing its overpayment determination.¹ On appeal, for the second time, the Board affirmed the Office's decision dated November 5, 2002, finding that appellant was at fault in the creation of an overpayment for the period May 9, 1986 through April 29, 1995 and affirmed repayment in either a lump sum or withholding \$500.00 from his continuing compensation. The Board, however, set aside the finding regarding the amount of overpayment and remanded the case for clarification of the calculation of overpayment, in particular for an explanation of why the overpayment amount was reduced by \$561.00 from its original amount of \$9,827.69 to \$9,266.69.²

On remand, the Office informed appellant in a letter dated August 30, 2004 that it had reduced the overpayment from \$9,827.69 to \$9,266.69 because it had erroneously calculated the overpayment based on the period May 9, 1986 to September 30, 1995 rather than the period May 9, 1986 to April 29, 1995.³ The Office determined that appellant's actual earnings from May 9, 1986 to April 29, 1995 were \$17,996.81, which occurred over 3278 calendar days, and resulted in average actual earnings of \$38.43 per week. The Office calculated the amount of appellant's entitlement for the period May 9, 1986 to April 29, 1995 based on his actual earnings as \$299,295.84. The Office subtracted \$299,295.84 from \$308,572.53, the amount of compensation he received, to find a total overpayment of \$9,266.69.

In a decision dated August 30, 2004, the Office found that appellant received an overpayment of compensation in the amount of \$9,266.69 because he earned wages during the period May 9, 1986 to April 29, 1995 while also receiving compensation for total disability. The Office further noted that he was at fault in the creation of the overpayment and that it would be collected by withholding \$500.00 from his continuing compensation payments.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees' Compensation Act⁴ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁵ No further compensation or 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 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.⁷

¹ *Stephen W. Jackson, a.k.a. Stephen J. Wilde*, Docket No. 98-230 (issued February 4, 2000).

² *Stephen J. Wilde*, Docket No. 03-814 (issued June 10, 2004).

³ The Office noted that appellant did not have actual earnings after April 29, 1995.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8102(a).

⁶ 20 C.F.R. § 10.515(a).

⁷ 5 U.S.C. § 8116(a); *Donna M. Rowan*, 54 ECAB ____ (Docket No. 03-908, issued July 11, 2003).

ANALYSIS

The record establishes that appellant received an overpayment of compensation in the amount of \$9,266.69 for the period May 9, 1986 to April 29, 1995 because the Office failed to properly reduce his compensation based on his actual earnings. The Office did not issue a formal wage-earning capacity determination but instead calculated appellant's compensation using the *Shadrick* formula.⁸ When an employee returns to work and has earnings, he is not entitled to receive temporary total disability benefits and actual earnings for the same time period.⁹ Under these circumstances, the Office offsets actual earnings pursuant to the *Shadrick* formula. If a reduction of benefits based upon actual earnings is not accompanied by a determination that the actual earnings "fairly and reasonably" represent wage-earning capacity, an informal reduction of benefits utilizing the *Shadrick* formula is proper rather than a formal loss of wage-earning capacity determination. In this case, the Office did not find that appellant's actual earnings from May 9, 1986 to April 20, 1995 fairly and reasonably represented his wage-earning capacity and thus properly provided an informal determination of the amount owed him based on his actual earnings.

In determining the amount of the overpayment, the Office calculated the amount of compensation appellant should have received during the period May 9, 1986 to April 29, 1995 using the *Shadrick* formula. The Office found that appellant's actual earnings from May 9, 1986 to April 29, 1995 were \$17,996.81, which occurred over 3278 calendar days and resulted in average actual earnings of \$38.43 per week. The Office calculated the amount of appellant's entitlement for the period May 9, 1986 to April 29, 1995 based on his actual earnings as \$299,295.84. The Office subtracted \$299,295.84 from \$308,572.53, the amount paid to appellant, to find a total overpayment of \$9,266.69. The Office explained that this reduced the total overpayment by \$561.00 because it had previously calculated the overpayment based on an incorrect period, from May 9, 1986 to September 30, 1995, even though appellant did not have actual earnings after April 29, 1995. The May 9, 1986 Board notes, however, that subtracting \$299,295.84 from \$308,572.53 yields an overpayment of \$9,276.69 rather than \$9,266.69. The record supports the finding of an overpayment of \$9,276.69.

On appeal, appellant does not contest the amount of overpayment but instead challenges the Office's finding that he was at fault in its creation. The Board, however, previously affirmed the finding that he was at fault in its June 10, 2004 decision.¹⁰ The issue of fault is not currently before the Board.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$9,276.69 for the period May 9, 1986 to April 29, 1995.

⁸ See *Albert C. Shadrick*, 5 ECAB 376 (1953); 20 C.F.R. § 10.403(c).

⁹ *Daniel Renard*, 51 ECAB 466 (2000); 20 C.F.R. § 10.403(c).

¹⁰ See *Stephen J. Wilde*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2004 is affirmed, as modified.

Issued: December 20, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board