

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

LORI V. VERITY, Appellant

and

**U.S. POSTAL SERVICE, FORT LAUDERDALE
P & DC, Fort Lauderdale, FL, Employer**

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**Docket No. 05-231
Issued: June 15, 2005**

Appearances:
Lori V. Verity, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 1, 2004 appellant filed a timely appeal of an October 14, 2004 merit decision of the Office of Workers' Compensation Programs, which found that she received an overpayment of compensation in the amount of \$1,776.53. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$1,776.53; (2) whether the Office properly determined that appellant was at fault in accepting the overpayment and was therefore not entitled to waiver; and (3) whether the Office properly required repayment of the overpayment by deducting \$225.80 every four weeks from

appellant's continuing compensation. On appeal appellant contends that, as she turned the overpayment check over to her pharmacy, an overpayment was not created.¹

FACTUAL HISTORY

On April 2, 1993 the Office accepted that appellant, then a 35-year-old clerk, sustained an employment-related lumbosacral strain. She worked intermittently until September 19, 1993, and in 1996 and 1998 returned to light duty for brief periods. Appellant last worked on September 16, 1998 and was placed on the periodic rolls. The accepted conditions include a herniated disc at L4-5 and depression.

On May 25, 2004 the Office issued a preliminary finding that an overpayment in compensation in the amount of \$1,776.53 was created because appellant was reimbursed for pharmacy services in error. The Office stated that the pharmacy had billed the Office for services but that the Office paid appellant in the amount of \$1,776.53 instead of directly reimbursing the pharmacy. The Office found appellant at fault in the creation of the overpayment because she accepted a payment which she knew or reasonably should have known to be incorrect. She was informed of the actions she could take in response and provided an overpayment questionnaire to submit. By decision dated October 14, 2004, the Office finalized the overpayment decision. The Office found that appellant was at fault and directed recovery by deducting \$225.80 every four weeks from her continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

To be entitled to reimbursement for medical expenses incurred, a claimant must submit proper documentation in accordance with the requirements under Office regulations found at 20 C.F.R. § 10.802. Any request for reimbursement must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid.²

ANALYSIS -- ISSUE 1

On appeal, appellant acknowledged that she received the check in error and stated that she signed it over to her pharmacy. As proof of payment, the Office submitted a September 21, 2003 remittance voucher which indicated payment in the amount of \$1,776.53 for three prescriptions obtained on August 6, 2003 from Priority Healthcare Pharmacy. The record does not include a request from appellant for reimbursement for prescription drug expenses, and there is no evidence of record that appellant paid Priority Healthcare Pharmacy any amount of money for the August 6, 2003 prescriptions. According to the Office, it was directly billed by the pharmacy for the services provided to appellant. As there is no proof of appellant's entitlement

¹ The Board notes that appellant submitted supporting evidence to the Office subsequent to its October 14, 2004 decisions and with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.802(b).

to reimbursement for the cost of these particular prescription drugs, the \$1,776.53 she directly received from the Office resulted in an overpayment in compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Federal Employees' Compensation Act³ provides that an overpayment in compensation shall be recovered by the Office 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."⁴

Section 10.433(a) of the Office's regulations provides that 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 in 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 to the overpaid individual)."⁵

ANALYSIS -- ISSUE 2

Appellant contended that she signed the check for \$1,776.53 over to her pharmacy. The Office's remittance voucher indicated that the pharmacy charges were paid on September 21, 2003, and appellant did not deny receiving the payment for \$1,776.53. By admitting that she signed the check over to the pharmacy, appellant effectively acknowledged that she knew she was not entitled to the payment. The Board therefore finds that the Office properly found appellant to be at fault under the facts and the circumstances of this case, as the record supports the Office's finding that appellant knew or reasonably should have known that she was not entitled to the \$1,776.53 payment. As appellant was at fault in the creation of the overpayment, she was not entitled to waiver.⁶

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8129.

⁵ 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

⁶ *Id.*

LEGAL PRECEDENT -- ISSUE 3

The Office's implementing regulation provides that, if an overpayment of compensation has been made to an individual entitled to further payments and no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.⁷ The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.⁸ When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.⁹

ANALYSIS -- ISSUE 3

In the instant case, appellant, who remains on the periodic rolls, did not submit an overpayment recovery questionnaire or other financial information as the Office requested in its preliminary overpayment notification dated May 25, 2004. There is therefore no evidence of record which would permit the Office to consider the probable extent of future payments, the rate of compensation the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.¹⁰ The Board thus finds that the Office did not err in withholding \$225.80 from her continuing compensation payments.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,776.53, that she was at fault in the creation of the overpayment, and that the Office properly required recovery of the overpayment by deducting \$225.80 every 28 days from her continuing compensation payments.

⁷ 20 C.F.R. § 10.441(a).

⁸ 20 C.F.R. § 10.438.

⁹ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).

¹⁰ 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2004 be affirmed.

Issued: June 15, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member