

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

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**LEWIS PRYOR, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bradenton, FL, Employer**

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**Docket No. 05-373  
Issued: June 21, 2005**

*Appearances:*  
*Lewis Pryor, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 8, 2004, finding a \$924.00 overpayment of compensation and denying waiver of the overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment in this case.

**ISSUE**

The issues are: (1) whether the Office properly determined that appellant received an overpayment of compensation in the amount of \$924.00; and (2) whether the Office properly denied waiver of the overpayment.

**FACTUAL HISTORY**

On November 2, 2003 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an injury to his right upper torso with weakness in his right hand when lifting a heavy package. On December 22, 2003 the Office accepted his claim for cervical radiculopathy and paid compensation for total disability.

By letter dated March 26, 2004, the employing establishment indicated that appellant was offered a limited-duty job which he accepted. By letter dated May 10, 2004, the employing establishment stated that he returned to work on March 10, 2004 but continued to receive compensation until March 20, 2004 and requested that the Office recover the overpayment. In a letter dated June 22, 2004, the employing establishment explained that appellant was released to return to work on March 9, 2004, that he was scheduled to be off on March 10, 2004, that he was on annual leave from March 11 through 13, 2004, that he was scheduled to be off on March 14, 2004 and that he was on annual leave until he retired on April 2, 2004.

On July 28, 2004 the Office issued a preliminary overpayment finding in the amount of \$924.00 for the period March 10 through 20, 2004. It found that appellant was without fault in the creation of the overpayment as, at the time the Office was notified of his release to work, it had already processed the compensation check for the period February 21 to March 20, 2004. The Office determined that appellant received compensation at the three-fourths rate commencing March 10, 2004 at \$1,010.48, minus \$86.48 for life insurance deductions, resulting in an overpayment of \$924.00. The Office informed him of the procedures for requesting a waiver of repaying the overpayment and noted that he must take action within 30 days if he wished to apply for waiver. He did not respond.

By decision dated November 8, 2004, the Office finalized the preliminary overpayment determination. It determined that appellant was not entitled to waiver of the overpayment as he had not submitted any evidence to assist the Office in determining his qualifications for waiver.

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

Section 8116(a) of the Federal Employees' Compensation Act provides that, while an employee is receiving compensation under the Act the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.<sup>1</sup>

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

In the present case, appellant received compensation after he returned to work on March 10, 2004 when he used annual leave. The record shows that he received compensation for the period March 10 to 20, 2004, in the amount of \$1,010.48, minus \$86.48 credit for life insurance deductions for a total overpayment of \$924.00. He was not entitled to receive both compensation and payment for annual leave at the same time.<sup>2</sup> Therefore, the Office properly determined that appellant was overpaid by \$924.00.

#### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8129 of the Act, 5 U.S.C. § 8129(b), 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

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<sup>1</sup> 5 U.S.C. § 8116(a).

<sup>2</sup> *Id.*

against equity and good conscience.<sup>3</sup> Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.<sup>4</sup> However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.<sup>5</sup> The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>6</sup>

The applicable regulations provide that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office. Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>7</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In the instant case, appellant did not submit any information regarding his financial situation. He failed to submit sufficient evidence to show that he needs substantially all of the current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed, as requested by the Office on July 28, 2004. Therefore, he does not qualify for waiver under the "defeat the purpose of the Act" standard.<sup>9</sup> Further, there is no evidence in this case, nor did appellant allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received. Accordingly, the Office properly found that his failure to respond to the July 28, 2004 letter or submit financial information was sufficient grounds to find that he does not qualify for waiver. The Office did

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<sup>3</sup> 20 C.F.R. §§ 10.430, 433, 434, 436, 437, 441.

<sup>4</sup> 5 U.S.C. § 8129(b).

<sup>5</sup> 20 C.F.R. § 10.433(a).

<sup>6</sup> 20 C.F.R. § 10.433(c).

<sup>7</sup> 20 C.F.R. § 10.437.

<sup>8</sup> 20 C.F.R. § 10.438(a).

<sup>9</sup> See *Nina D. Newborn*, 47 ECAB 132 (1995).

not abuse its discretion by issuing its November 8, 2004 final decision denying waiver of recovery of the overpayment in the amount of \$924.00.<sup>10</sup>

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$924.00 and properly denied waiver of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 8, 2004 is hereby affirmed.

Issued: June 21, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>10</sup> As recovery of the overpayment is not sought from continuing compensation benefits, the Board does not have jurisdiction of this aspect of the case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000).