

the claim for left ankle strain and left tibial tendinitis. Appellant worked intermittently from April 9 to August 18, 2003 and he claimed temporary total disability beginning August 23, 2003. He received appropriate wage-loss compensation. The Office placed appellant on the periodic compensation rolls effective February 22, 2004.

On May 25, 2004 the Office issued a preliminary finding of overpayment in the amount of \$218.34. The Office explained that the overpayment resulted because appellant was reimbursed for pharmacy services in error. The pharmacy billed the Office for services, however, reimbursement was made to appellant instead of the pharmacy. The Office found that appellant was at fault because he accepted a payment he knew or reasonably should have known to be incorrect. On September 14, 2004 the Office issued a final decision on the \$218.34 overpayment. The Office found appellant at fault and ordered repayment by deducting \$50.00 every four weeks from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

To be entitled to reimbursement for medical expenses incurred appellant must submit proper documentation in accordance with the requirements under 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.¹

ANALYSIS -- ISSUE 1

On appeal, appellant did not challenge the fact of overpayment or the amount he received in error. His only argument was that because he had not received any compensation for two months, he believed the check was part of his compensation. As proof of payment, the Office submitted a September 25, 2003 remittance voucher that indicated payment in the amount of \$218.34 for two prescriptions obtained on July 31 and August 4, 2003 from Priority Healthcare Pharmacy. The record does not include any request from appellant for reimbursement for prescription drug expenses nor is there any evidence that appellant paid Priority Healthcare Pharmacy any amount of money for the July 31 and August 4, 2003 prescriptions. According to the Office, the pharmacy directly billed the Office for the services it provided appellant. As there is no proof of appellant's entitlement to reimbursement for the cost of these particular prescription drugs, the \$218.34 he received from the Office resulted in an overpayment of benefits.

LEGAL PRECEDENT -- ISSUE 2

Under 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.² Section 10.433 of the implementing regulations specifically provides that the

¹ 20 C.F.R. § 10.802(b) (1999).

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

Office may consider waving an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.³ 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.⁴ 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.”⁵

ANALYSIS -- ISSUE 2

Appellant contends that he had not received any form of compensation for two months, and thus, when he received the check he believed it was part of his compensation. In its final decision regarding the overpayment, the Office found that appellant was at fault because he reasonably should have known that he was not entitled to the payment because he was “already receiving compensation for total disability” and he “did not file a reimbursement request.”

The Office is correct that appellant did not file a reimbursement request. However, there is no proof that appellant was already receiving compensation for total disability when the Office erroneously paid him for the July 31 and August 4, 2003 prescriptions charges. The record indicates that the Office first paid appellant wage-loss compensation on November 14, 2003 for the period September 21 to November 7, 2003. Appellant did not claim wage-loss compensation for any period prior to September 21, 2003. The Office’s remittance voucher indicated that the pharmacy charges were paid on September 25, 2003. There is no evidence of record of the type of correspondence that accompanied the September 25, 2003 remittance from the Office or when the check was received by appellant. Appellant, however, did not deny receiving the payment. He argued that because he had not received any payment for approximately two months, he thought the check was part of his compensation. The Office’s assertion that appellant should have been able to distinguish the September 25, 2003 payment of \$218.34 from his disability compensation is not persuasive because appellant had not received any disability compensation from the Office prior to November 14, 2003. The record does not support the Office’s finding that appellant knew or reasonably should have known that he was not entitled to the \$218.34 payment.

Appellant claims that repayment of the debt would create a financial hardship. Because the Board finds that appellant was without fault in accepting the overpayment of benefits, the case will be remanded to the Office for a determination of whether appellant is entitled to a waiver of recovery of the overpayment.

³ 20 C.F.R. § 10.433(a) (1999).

⁴ *Id.*

⁵ *Id.*

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of the regulations authorizes the Office to recover an overpayment by decreasing later payments of compensation.⁶ In exercising its authority under section 10.441(a), the Office must take 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

Section 10.438 of the regulations provides that “the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office].”⁸ As the regulation indicates, this information is necessary to determine whether or not recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.⁹ Appellant’s financial information is also used to determine any necessary repayment schedule.¹⁰

ANALYSIS -- ISSUE 3

On appeal, appellant claimed that the Office’s decision to deduct \$50.00 every four weeks from his continuing compensation would create a financial hardship. Given the Board’s disposition on the issue of fault and the remand to the Office to consider appellant’s eligibility for waiver of the overpayment, the issue of recovery is rendered moot on this appeal.

CONCLUSION

The Board finds that appellant received an overpayment in the amount of \$218.34 and he was without fault in accepting the overpayment. The case will be remanded to the Office for consideration of appellant’s request for waiver. Following such further development of the evidence as deemed necessary, the Office shall issue a *de novo* decision on the issues of waiver and recovery of the overpayment.

⁶ 20 C.F.R. § 10.441(a) (1999).

⁷ *Id.*

⁸ 20 C.F.R. § 10.438(a) (1999).

⁹ *Id.*

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further action consistent with this decision.

Issued: March 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member