



her federal employment. The reverse of the claim form indicated that appellant had begun working a light-duty position as of December 3, 1998. The Office accepted the claim for a back strain.

The record does not contain a detailed work history, but it appears that appellant continued to work with intermittent dates of leave without pay claimed. An April 28, 2000 memorandum from an Office field nurse indicated that appellant was working 40 hours, with 4 hours per day at her regular job and 4 hours per day light duty.

A compensation payment was issued on May 16, 2003 for temporary total disability from October 25 to November 23, 2002. The pay rate was reported as \$815.44 per week and the “pay rate effective date” was October 25, 2002. The Office also issued payments commencing June 13, 2003 for the period February 25 to September 30, 2003. The pay rate was \$815.44 per week and the effective pay rate date was October 25, 2002. The payment for the period October 1 to 31, 2003, issued on November 21, 2003, indicated that the pay rate for compensation purposes was \$609.38 and the effective pay rate date was reported as December 9, 1998. A worksheet reported that appellant’s base pay was \$13.61 per hour, or \$544.40 per week, plus \$38.28 in night differential and \$26.70 in Sunday pay, for a total of \$609.38 per week. The worksheet stated that appellant “has never filed for recurrence claim.”

By letter dated November 18, 2003, the Office advised appellant that she would continue to receive compensation with a net amount of \$1,983.90. The pay rate used to compute gross compensation was stated as \$609.38. By decision dated February 26, 2004, the Office determined that appellant was not entitled to intermittent dates of disability from June 24, 1999 to June 2, 2000.<sup>1</sup>

In a letter dated August 12, 2004, the Office advised appellant that it had made a preliminary determination that a \$3,958.69 overpayment of compensation was created for the periods October 25 to November 23, 2002 and February 25 to September 30, 2003. The Office stated, “You were paid at an incorrect pay rate for the periods October 25 through November 23, 2002 and for February 25 through September 30, 2003. The pay rate used for these periods was \$815.44. The correct pay rate was \$609.38.” No additional explanation was provided regarding the creation of the overpayment. The Office also made a preliminary finding that appellant was not at fault in creating the overpayment, and advised appellant of actions she may take with respect to waiver of the overpayment. A memorandum dated August 12, 2004 regarding fault indicated that appellant should not have been aware that the compensation payments used the wrong pay rate.<sup>2</sup> An overpayment recovery questionnaire (Form OWCP-20) was enclosed.

By decision dated September 24, 2004, the Office finalized the preliminary determination regarding the amount of the overpayment. The Office denied waiver of the overpayment, finding

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<sup>1</sup> Appellant did not request review of this decision; her arguments on appeal related to the overpayment of compensation issue.

<sup>2</sup> On appeal, appellant argues that the memorandum is incomplete as the final recommendation ends in mid sentence, but the memorandum reiterates information provided in the cover letter and there is no indication that appellant was not provided with relevant information regarding the fault issue.

that appellant did not submit any financial information. As to repayment, the Office directed appellant to send a payment of \$3,895.69; if she could refund the entire amount immediately, she should contact the Office to make arrangements for recovery.<sup>3</sup>

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

Under 5 U.S.C. § 8101(4), “‘monthly pay’ means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater . . . .”

A final decision of the Office “shall contain findings of fact and a statement of reasons.”<sup>4</sup> With respect to overpayment decisions, the Office must provide clear statements showing how the overpayment was calculated.<sup>5</sup>

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

The Office found that an overpayment was created because an incorrect pay rate was used in payments covering the period October 25 to November 23, 2002 and February 25 to September 30, 2003. There were, however, no factual findings or explanations provided as to how the pay rate was calculated. The initial step is to determine the date that monthly pay will be determined pursuant to section 8101(4). This requires a determination as to the date of injury, the date disability began, and the time compensable disability recurs if more than six months after resuming regular full-time work.

In this case the Office apparently determined that the date of injury was appropriate, without explaining how section 8101(4) was applied. It is not clear from the record what duties appellant was performing in 2002 and 2003, or specifically when she stopped working and under what circumstances, and no findings were made by the Office. A worksheet briefly stated that appellant did not file a recurrence claim, but the issue is not dependent on the specific form filed.<sup>6</sup> Section 8101(4) requires the Office to properly make a determination as to whether compensable disability recurred more than six months after resuming regular full-time work.<sup>7</sup> Once the proper date is determined, the Office should discuss the information received from the employing establishment and explain how the pay rate for compensation purposes was calculated

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<sup>3</sup> The Office did not make a final decision with respect to recovery of an overpayment from continuing compensation and therefore the Board does not have jurisdiction over the issue. *See Levon H. Knight*, 40 ECAB 658 (1989).

<sup>4</sup> 20 C.F.R. § 10.126 (1999).

<sup>5</sup> *James Tackett*, 54 ECAB \_\_ (Docket No. 02-1200, issued June 12, 2003); *Sandra K. Neil*, 40 ECAB 924 (1989).

<sup>6</sup> *See, e.g., John M. Richmond*, 53 ECAB 702 (2002), where the case was remanded on the issue of whether disability from a December 1991 surgery was a recurrence of compensable disability under section 8101(4), with no indication that a claim for a 1991 recurrence of disability had been filed.

<sup>7</sup> *See Jeffrey T. Hunter*, 52 ECAB 503 (2001) for a discussion of regular full-time employment under section 8101(4).

under 5 U.S.C. § 8114. After such further development as the Office deems necessary, it should issue an appropriate decision. In view of the Board's findings, the waiver issue will not be addressed.

**CONCLUSION**

The Board finds that the Office did not adequately explain how the pay rate for compensation purposes was determined, and therefore fact and amount of overpayment are not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 24, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 9, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member