

FACTUAL HISTORY

On April 8, 1997 appellant, a 39-year-old paralegal specialist, filed a traumatic injury claim alleging that she injured her wrists and hands in March 1997.¹ The Office accepted the claim for left elbow epicondylitis and left wrist tendinitis and subsequently accepted bilateral carpal tunnel syndrome.²

On December 22, 1998 appellant filed an occupational disease claim alleging that on November 18, 1998 she first realized her bilateral hand and wrist pain were employment related.³ The Office accepted the claim for bilateral carpal tunnel syndrome, bilateral epicondylitis and bilateral tenosynovitis. Appellant stopped work on December 20, 1999, returned to work four hours per day with restrictions on July 17, 2000 and was subsequently placed on the periodic rolls for temporary total disability effective August 25, 2001. Appellant resigned from her position effective January 24, 2003.⁴

On November 30, 2004 appellant elected to receive Office of Personnel Management (OPM) benefits, rather than wage-loss compensation from the Office, with an effective date of June 2, 2003.

In a letter dated December 8, 2004, OPM advised the Office of appellant's election to received disability retirement benefits effective June 2, 2003. OPM requested the Office to provide the date her benefits were terminated and to include the amount of reimbursement required. On December 14, 2004 the Office received appellant's request to send the forms so she could elect disability retirement.

In a March 8, 2005 memorandum to file, the Office noted that appellant was removed from the periodic rolls effective February 20, 2005. It noted the amount of reimbursement from June 2, 2003 to January 22, 2005 would be \$23,051.86 and that an overpayment for the period January 23 to February 19, 2005 would be issued.

In a third request letter dated March 8, 2005, OPM resent its December 8, 2004 letter regarding appellant's election to receive disability benefits from OPM.

On March 22, 2005 the Office made a preliminary determination that appellant received an overpayment of compensation benefits in the amount of \$1,028.00. The Office noted that appellant elected to receive OPM benefits effective June 2, 2003 and that she received a payment

¹ Appellant subsequently filed an occupational disease claim on June 18, 1997 alleging that on March 1, 1997 she first realized her wrist and elbow pain were employment related. She previously filed a traumatic injury claim but "did not realize that a CA-2 was going to be needed."

² This was assigned file number 12-0168468.

³ This was assigned file number 12-0179473.

⁴ The Board notes the Office issued a loss of wage-earning capacity decision on November 17, 2003 which an Office hearing representative affirmed on October 13, 2004. Appellant requested reconsideration on December 6, 2004. On March 8, 2005 the Office denied modification of her loss of wage-earning capacity. Appellant did not request review of this matter in the current appeal.

from January 23 to February 19, 2005 under the periodic rolls. The Office found appellant was at fault in creating the overpayment since she knew she could not receive benefits from both OPM and the Office.

On April 19, 2005 the Office received appellant's response. She contended that she did not receive dual benefits as her retirement was May 1, 2005 and OPM "was waiting for a release from" the Office. She submitted a page from OPM regarding her monthly benefits which stated that her first regular monthly payment would begin on May 1, 2005 and noted June 2, 2003 as the date her benefits began.

In a decision dated May 24, 2005, the Office finalized the preliminary determination regarding the amount of overpayment and appellant's role in creating the overpayment. Because appellant was at fault in creating the overpayment, the Office determined that he was not entitled to waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8116(a) of the Federal Employees' Compensation Act states that, while an employee is receiving workers' compensation, he or she "may not receive salary, pay or remuneration of any type from the United States," except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death being compensated for under the Act.⁵ The implementing regulations provide that a "beneficiary may not receive wage-loss compensation concurrently with a [f]ederal retirement or survivor annuity."⁶ The beneficiary must elect the benefit that he or she wishes to receive.⁷

ANALYSIS -- ISSUE 1

On November 30, 2004 appellant elected to receive an OPM retirement disability annuity effective June 2, 2003 in lieu of wage-loss compensation she had been receiving under the Act. She informed OPM of her election on November 30, 2004. In a letter dated December 8, 2004, OPM requested that the Office provide information showing the termination date of her workers' compensation benefits and the amount required for reimbursement. In a March 8, 2005 memorandum to file, the Office noted that appellant was removed from the periodic rolls effective February 20, 2005. In a March 8, 2005 letter, OPM reiterated its request for the information requested in the December 8, 2004 letter. In a March 8, 2005 memorandum to file, the Office noted the amount of reimbursement would be \$23,051.86 for the period June 2, 2003 to January 22, 2005 and that an overpayment for the period January 23 to February 19, 2005 would be issued.

⁵ 5 U.S.C. § 8116(a).

⁶ 20 C.F.R. § 10.421(a)

⁷ *Id.*

The record reflects that appellant did not begin receiving regular monthly OPM retirement benefits until May 1, 2005. In the March 8, 2005 memorandum, the Office indicated that appellant was removed from the periodic rolls effective February 20, 2005 and that OPM was provided information for reimbursement. However, the period noted for reimbursement does not include the compensation paid for the period January 23 to February 19, 2005. It is unclear why the Office omitted this period as this period is prior to the termination of appellant's compensation benefits and OPM specifically requested the amount for reimbursement as well as the date appellant's benefits were terminated. The Board finds, based upon the facts of this case, that appellant did not receive an overpayment of compensation. In view of the disposition of this issue, the Board need not address the remaining issue.

CONCLUSION

The Board finds that the evidence of record does not establish that appellant received an overpayment in the amount of \$1,028.00 for the period January 23 to February 19, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2005 is reversed.

Issued: January 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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