United States Department of Labor
Employees' Compensation Appeals Board

REBECCA LOPEZ-ROSENDE, Appellant	)	
and	)	**Docket No. 05-511**
	)	**Issued: June 12, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Apple Valley, CA, Employer	)	

Appearances:
Rebecca Lopez-Rosende, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On December 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 17, 2004 affirming an Office decision suspending her right to compensation for obstructing a medical examination. Appellant also appealed a merit decision dated November 16, 2004 finding a $16,418.81 overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether the Office properly suspended appellant's compensation benefits from June 17 to October 28, 2002 based on her obstruction of a medical examination; (2) whether the Office properly determined that appellant received a $16,418.81 overpayment of compensation from June 17 to September 7, 2002 and from October 29, 2002 to August 8, 2003; and (3) whether the Office properly determined that appellant was at fault in the creation of the overpayment.

FACTUAL HISTORY

On June 6, 1996 appellant, then a 35-year-old distribution clerk, injured both shoulders when throwing a parcel. Her claim was accepted for bilateral shoulder strains, bilateral shoulder impingement syndrome and the Office authorized surgery that was performed on the right shoulder on February 28, 1997 and on the left shoulder on January 22, 2002. Appellant returned to modified duty in 1997, stopped work on January 22, 2002 and returned to light-duty work on September 23, 2002.

In a decision dated June 9, 1999, the Office determined that appellant had been reemployed as a modified window distribution clerk with wages equal to her date-of-injury position effective April 27, 1997. The Office found that this position fairly and reasonably represented her wage-earning capacity. By letter dated July 4, 1999, appellant requested an oral hearing before an Office hearing representative.

In a decision dated July 15, 1999, the Office granted appellant a schedule award for 16 percent permanent impairment of the right upper extremity.

In a decision dated December 21, 1999, the hearing representative set aside the wage-earning capacity decision dated June 9, 1999. The hearing representative noted that the current modified distribution clerk position was not consistent with appellant's physical restrictions and could not be used to determine wage-earning capacity.

Appellant came under the treatment of Dr. David L. Wood, a Board-certified orthopedist, who on January 22, 2002 noted performing left shoulder arthroscopy, subacromial decompression, bursectomy, coracoacromial ligament resection and debridement of partial thickness rotator cuff tear. He diagnosed impingement syndrome of the left shoulder and posterior rotator cuff tear.

On May 15, 2002 appellant was advised that she was placed on the periodic rolls and would be paid total disability compensation of $2,381.72 every 28 days.

On May 23, 2002 the Office referred appellant for a second opinion evaluation to obtain an assessment of her work-related condition. The Office advised appellant that the appointment was scheduled for June 17, 2002 with Dr. Laurence Meltzer, a Board-certified orthopedic surgeon. The Office informed appellant of her responsibility to attend the appointment and that, if she failed to do so without an acceptable reason, her compensation benefits could be suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.[1]

In an Office telephone log dated June 17, 2002, appellant reported that she attended the scheduled second opinion examination; however, the physician behaved rudely. She asserted that the physician's office was 50 miles from her house which was against Office regulations. Appellant further advised that she would continue to react negatively as long as the Office continued to send her to "jerks."

[1] 5 U.S.C. § 8123(d).

In a report dated June 20, 2002, Dr. Meltzer advised that appellant presented to his office extremely angry and hostile and complained that she was forced to drive over 25 miles to his office. He examined the right shoulder and attempted to examine her left shoulder but could not do so due to appellant's resistance. Dr. Meltzer advised that, as he attempted to evaluate appellant, she stated that "I don't like your attitude and you can do whatever you want to do. Either do it or don't." He indicated that he determined that he could not complete the examination.

By letter dated July 17, 2002, mailed to appellant's address of record, the Office proposed to suspend her compensation benefits on the grounds that she refused to cooperate with the medical examination scheduled for June 17, 2002. The Office allowed appellant 14 days to provide good cause for her failure to submit or cooperate with the examination and informed her of the penalty provision of 5 U.S.C. § 8123(d).

In a letter dated July 25, 2002, appellant advised that she attended the medical examination which was 50 miles from her home. She noted that Dr. Meltzer's statements regarding her conduct were untrue and that she believed that the doctor and the Office were biased against her. Appellant further indicated that Dr. Meltzer was rude and hostile to her during the examination and she was afraid that he would hurt her.

By decision dated September 16, 2002, the Office finalized the proposed suspension of compensation since appellant failed to attend and fully cooperate in the medical examination scheduled for June 17, 2002 and did not establish good cause for refusing to submit to the examination. The suspension was effective June 17, 2002. Appellant continued to receive wage-loss compensation benefits.[2]

In a duty status report dated September 20, 2002, Dr. Wood advised that appellant could return to part-time modified duty on September 23, 2002 subject to various restrictions. In a return to work clearance form dated September 24, 2002, the employing establishment noted that appellant was approved to return to work on September 23, 2002.

On October 11, 2002 appellant requested an oral hearing. She submitted a statement from Michael Hillion, a coworker, who noted attending a second opinion examination with Dr. Meltzer whom she said was rude and unprofessional. In a letter dated October 29, 2002, appellant advised that she would cooperate with the second opinion examination and requested a nurse be present in the examination room. She submitted a copy of a letter to Dr. Meltzer in which she requested to reschedule her appointment and have a witness present during the examination.

In a decision dated June 5, 2003, the hearing representative set aside the Office decision dated September 16, 2002 and remanded the case for further development. The hearing representative advised that on October 29, 2002 appellant agreed to cooperate with the second opinion examination and that her benefits were reinstated effective this date. The hearing representative directed the Office to refer appellant for a second opinion examination.

[2] Appellant advised the Office that she returned to work full time on September 23, 2002 and was overpaid benefits.

On June 26, 2003 the Office referred appellant for a second opinion evaluation to obtain an assessment of her work-related condition. The Office advised appellant that the appointment was scheduled for November 17, 2003 with Dr. Meltzer. The Office informed appellant of her responsibility to attend the appointment and that, if she failed to do so without an acceptable reason, her compensation benefits could be suspended in accordance with section 8123(d) of the Act.[3]

In a letter dated July 4, 2003, appellant advised that she was concerned that she was being referred to Dr. Meltzer, who she believed mistreated her during the previous examination. She requested a witness be present during the examination; however, this request was denied.

In a report dated July 25, 2003, Dr. Meltzer advised that he reviewed the records provided and performed a physical examination of appellant. He diagnosed status post arthroscopy for decompression of impingement syndrome, repair of the rotator cuff and debridement. Dr. Meltzer advised that the diagnosed conditions were causally related to the work injury of June 6, 1996. He opined that appellant continued to have residuals of her work injury but could return to work in a modified position subject to various lifting restrictions.

In a daily computation log dated August 8, 2003, the Office calculated compensation benefits it deemed payable to appellant for the period November 2, 2002 to August 8, 2003. The Office noted that appellant's gross compensation entitlement for the period November 2, 2002 to August 8, 2003 was $24,622.90. The gross compensation was calculated based on the date of disability of January 22, 2002. The following deductions were made from gross compensation: health benefits of $1,112.53, optional life insurance of $267.20 and basic life insurance of $133.40 for a net compensation of $23,109.77. The Office noted that an additional overpayment deduction of $6,860.64 would be made from net compensation for a final payment of $16,249.13 to be directly deposited into appellant's account on August 15, 2003. This amount constituted net compensation benefits payable for the period November 2, 2002 to August 8, 2003. The basis of the overpayment deduction was because compensation continued to be paid to appellant after she obstructed her second opinion examination scheduled on June 17, 2002 and the obstruction continued until she consented to the examination on October 29, 2002. The period of the overpayment was from June 17 to September 7, 2002.[4]

In a telephone log dated September 2, 2003, appellant advised the Office that she returned to work full time on September 23, 2002 and was also receiving compensation benefits which resulted in an overpayment of compensation.

In a decision dated September 23, 2003, the Office denied appellant's claim for disability compensation benefits for the period June 17 to October 28, 2002 on the grounds that she obstructed the second opinion examination scheduled for June 17, 2002 without good cause.

[3] 5 U.S.C. § 8123(d).

[4] The Office noted that appellant's compensation benefits were denied for the period of obstruction, June 17 to October 28, 2002. However, the Office advised that compensation benefits stopped after the suspension decision dated September 16, 2002 and therefore the overpayment period was from June 17 to September 7, 2002.

On October 22, 2003 appellant requested an oral hearing before an Office hearing representative.

On October 31, 2003 the Office made a preliminary finding that appellant had been overpaid benefits in the amount of $16,418.81. The Office noted that the overpayment occurred because appellant was incorrectly paid compensation for the period June 17 to September 7, 2002, after she refused to cooperate with the second opinion examination.[5] The Office further noted that an additional overpayment occurred for the period October 29, 2002 to August 8, 2003, as appellant was paid total disability during this time but had returned to work full time on September 23, 2002 and received wages for the same period. The Office noted that appellant was paid net compensation, from November 2, 2002 to August 8, 2003, of $23,209.77. The Office indicated that it had made a prior overpayment deduction of $6,860.64 from the net compensation previously paid due to appellant's continued receipt of compensation after she obstructed the second opinion examination scheduled on June 17, 2002. The Office determined that appellant was at fault in creating the overpayment as she accepted payment which she knew or should have been expected to know was incorrect.

On November 28, 2003 appellant submitted a Form OWCP-20 overpayment recovery questionnaire. She noted monthly expenses of $3,716.00 and no monthly income. Appellant further noted that she had a checking and savings account balance of $26,249.00. She asserted that she was not at fault in creating the overpayment. Appellant advised that on August 19, 2003 she realized that she received a direct deposit in her account of $16,249.13. She submitted various bills including one bank statement indicating that she had a direct deposit from the Department of the Treasury in the amount of $2,286.00 and various utility and credit card bills. A hearing was held on May 25, 2004.

In a decision dated August 17, 2004, the hearing representative affirmed the decision of the Office dated September 23, 2003.

By decision dated November 16, 2004, the Office found that appellant received a $16,418.81 overpayment of compensation from June 17 to September 7, 2002 and from October 29, 2002 to August 8, 2003 for which she was at fault in creating. In an accompanying memorandum, the Office indicated that appellant should have reasonably known that she was not entitled to receive compensation for the period June 17 to October 28, 2002 as she obstructed a scheduled second opinion examination on June 17, 2002. Additionally, the Office advised appellant of its preliminary determination that an overpayment was created for the period October 20, 2002 to August 8, 2003 because appellant had returned to work full time on September 23, 2002 and that she knew or should have known that she was not entitled to total disability compensation after returning to work full time. The Office did not direct a specific mode of recovery for the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8123 of the Act authorizes the Office to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems

[5] *Id.*

necessary.[6] The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office.[7] The Office's federal regulation at section 10.320 provides that a claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.[8] Section 8123(d) of the Act and section 10.323 of the Office's regulation provide that, if an employee refuses to submit to or obstructs a directed medical examination, his or her compensation is suspended until the refusal or obstruction ceases.[9] However, before the Office may invoke these provisions, the employee is provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.[10] If good cause for the refusal or obstruction is not established entitlement to compensation is suspended in accordance with section 8123(d) of the Act.[11]

ANALYSIS -- ISSUE 1

The Board has reviewed the evidence of record and finds that the record establishes that appellant obstructed the June 17, 2002 second opinion examination with Dr. Meltzer within the meaning of section 8123 of the Act.[12]

The Office directed appellant to attend a second opinion evaluation with Dr. Meltzer, a Board-certified orthopedist. The Office properly determined that it required an assessment of appellant's work-related condition as her treating physician would not release her to a modified light-duty position. The Office, in its letter dated May 23, 2002, advised appellant that the examination was scheduled for June 17, 2002 at 12:00 p.m. and instructed her to attend the examination. The Office further advised appellant that her compensation could be suspended if she refused or obstructed the examination. The Office was notified by Dr. Meltzer, in a June 20, 2002 letter, that appellant presented for her examination and was extremely angry and hostile and complained that she was forced to drive over 25 miles to his office. He examined the right shoulder and attempted to examine her left shoulder but could not do so due to appellant's resistance. Dr. Meltzer advised that appellant stated, "I don't like your attitude and you can do whatever you want to do. Either do it or don't." He declined to examine appellant.

In a letter dated July 17, 2002, the Office afforded appellant 14 days to provide a good cause for her failure to cooperate with the second opinion examination. In a letter dated July 25,

---

[6] 5 U.S.C. § 8123(a).

[7] *James C. Talbert*, 42 ECAB 974, 976 (1991).

[8] 20 C.F.R. § 10.320.

[9] 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

[11] *Id.*; *see Scott R. Walsh*, 56 ECAB ___ (Docket No. 04-1962, issued February 18, 2005); *Raymond C. Dickinson*, 48 ECAB 646 (1997).

[12] 5 U.S.C. § 8123(a).

2002, appellant advised that she attended the medical examination which was 50 miles from her home. She indicated that Dr. Meltzer's statements regarding her conduct were untrue and that he and the Office were biased against her. Appellant further indicated that Dr. Meltzer was rude and hostile during the examination and she was afraid that he would hurt her.

The Board has recognized the Office's responsibility in developing claims.[13] Furthermore, as noted above, section 8123 authorizes the Office to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary. The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on this authority is that of reasonableness.[14] The referral to an appropriate specialist in appellant's area at the Office's expense cannot be considered unreasonable. Other than her lay and unsupported assertions, there is no evidence that the Office's referral was unreasonable or that the distance to the physician's office was not reasonable. The Office clearly acted within its discretion in referring appellant for a second opinion examination to assess her work-related injury and appellant's stated reasons for not cooperating with the examination do not establish good cause. With regard to appellant's assertion that Dr. Meltzer was hostile, angry and biased against her, the Board has reviewed the evidence and notes these assertions are without merit. She did not submit any probative evidence establishing any bias or otherwise showing how any of these assertions would rise to the level of good cause for refusing to cooperate in the second opinion evaluation by Dr. Meltzer.

In a letter dated July 4, 2003, appellant further asserted that she refused to submit to the examination with Dr. Meltzer because he behaved in an unethical and unprofessional manner. The Board has reviewed the evidence and notes these assertions are without merit. Appellant did not submit any probative evidence establishing that Dr. Meltzer behaved unethically or unprofessionally or otherwise show how any of these assertions would rise to the level of good cause for refusing to cooperate in the second opinion evaluation by Dr. Meltzer. Other than her lay and unsupported assertions, there is no evidence that the Office's referral was unreasonable. Appellant has failed to provide sufficient justification for her refusal to cooperate with the second opinion examination on June 17, 2002, therefore, the Board concludes that appellant has not shown good cause for her refusal to cooperate with the second opinion examination. The record reflects that appellant agreed to cooperate with the second opinion examination on October 29, 2002 and compensation benefits were reinstated on this date. The Office properly determined that appellant refused to submit to a properly scheduled medical examination on June 17, 2002 and suspended her right to compensation benefits through October 28, 2002.

[13] *See Scott R. Walsh, supra* note 11.

[14] *See id.*

LEGAL PRECEDENT -- ISSUE 2

Section 8123(d) of the Act provides:

> "If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee."[15]

Section 10.323 of the Office's regulations provides:

> "If an employee refuses to submit to or in any way obstructs an examination required by [the Office], his or her right to compensation under the [Act] is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the [Act] for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. § 8129 [overpayment section]."[16]

Section 8116 of the Act[17] provides, *inter alia*, that an employee who is receiving compensation for an employment injury may not receive wages for the same time period.[18]

When an employee returns to work and ceases to have any loss of wages, compensation for wage loss is no longer payable.[19]

ANALYSIS -- ISSUE 2

The Board has held in cases involving the obstruction of a medical examination that, while section 8123 of the Act does not provide a basis for the rejection of a claim for compensation, any compensation payable pursuant to a favorable decision on the merits of the claim after such obstruction ended would be subject to appropriate deductions under section 8123(d), that is, deductions for the period of the employee's obstruction of the medical examination.[20] The Board has further held that compensation for the period in which the

---

[15] 5 U.S.C. § 8123(d).

[16] 20 C.F.R. § 10.323.

[17] 5 U.S.C. § 8101 *et seq*.; *see* 5 U.S.C. § 8116.

[18] 5 U.S.C. § 8116(a).

[19] *See Kenneth E. Rush*, 51 ECAB 116 (1999); *Donny T. Gala*, 39 ECAB 1357 (1988).

[20] *See William G. Saviolidis*, 37 ECAB 174, (1985); *Gilbert Edgar Lee*, 34 ECAB 1445 (1983); *Joseph L. Ellis*, 33 ECAB 183 (1981).

employee refuses to undergo a reasonably requested medical examination by the Office is forfeited.[21]

The record indicates that appellant refused to undergo a medical examination directed by the Office on June 17, 2002. On October 29, 2002 appellant advised the Office that she would attend and cooperate with the second opinion examination. The Board finds that the Office properly determined that appellant was not entitled to compensation from June 17 to October 28, 2002 due to her obstruction of the second opinion examination. Appellant does not dispute that she received the overpayment in question nor does she dispute the amount of the overpayment. The Office explained how the overpayment occurred and provided this to appellant with the preliminary notice of overpayment. The record reflects that appellant was paid $2,381.72 every 28 days for the period June 17 to September 7, 2002[22] for a gross overpayment of $7,060.10. The following deductions were made from gross compensation: $164.34 for health insurance, $80.16 for optional life insurance and $40.02 for basic life insurance, for a net overpayment amount of $6,775.80. The Board finds that the Office properly determined the amount of the overpayment that covered the period June 17 to September 7, 2002.

The Office further determined that an additional overpayment occurred for the period October 29, 2002 to August 8, 2003, as appellant was paid total disability during this time but had returned to work full time on September 23, 2002 and received wages for the same period. The Office specifically noted that appellant's gross compensation for the period November 2, 2002 to August 8, 2003 was $24,622.90. The record reflects that the following deductions were made from gross compensation: health benefits of $1,111.53, optional life insurance of $267.20 and basic life insurance of $133.40, for a net compensation of $23,110.77. The Office further noted that an overpayment deduction of $6,860.64 was made from net compensation of $23,110.77, for a total compensation payment of $16,249.13.[23] This amount, $16,249.13, was directly deposited into appellant's account on August 15, 2003. The overpayment deduction was calculated for the period that appellant obstructed the second opinion examination, from June 17 to September 7, 2002. The Office advised that the overpayment deduction of $6,860.64 was incorrect and should have been $6,775.80 as calculated above. Because appellant received regular full-time wages from the employing establishment during the period October 29, 2002 to August 8, 2003, she was not entitled to disability compensation from the Office for the same period. The record establishes that she received an overpayment of $23,110.77 for this period prior to the overpayment deduction of $6,860.64 for a net overpayment of $16,250.13. The Office noted that the difference between the correct overpayment deduction of $6,775.80 and the actual overpayment deduction of $6,860.64 was $84.84. The amount of $84.84 was added to the net overpayment of $16,250.13 to equal a total overpayment of $16,334.97.[24]

[21] *William G. Saviolidis, id.*

[22] *See supra* note 4.

[23] The Office incorrectly calculated this amount which should be $16,250.13.

[24] The Board notes that the Office incorrectly calculated this total to be $16,418.81.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(b) of the Act[25] provides as follows:

> "Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."[26]

No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.[27]

Section 10.433(a) of the Office's implementing regulations provides:

> "On the issue of fault, 20 C.F.R. § [10.433(a)] provides in pertinent part: An individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect."[28]

With respect to whether an individual is without fault, section 10.433(b) of the Office's regulations provides in relevant part:

> "(b) Whether or not Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid."[29]

ANALYSIS -- ISSUE 3

The Office applied the third standard in determining that appellant was at fault in creating the overpayment. In order for the Office to establish that appellant was with fault in creating the overpayment of compensation, the Office must establish that, at the time appellant received the

[25] 5 U.S.C. §§ 8101-8193.

[26] 5 U.S.C. § 8129(b).

[27] *Gregg B. Manston,* 45 ECAB 344 (1994).

[28] *Kenneth E. Rush,* 51 ECAB 116 (1999).

[29] 5 U.S.C. § 10.433(b).

compensation check in question, she knew or should have known the payments were incorrect.[30] The record establishes such knowledge.

In her appeal, appellant did not dispute the fact and amount of the overpayment of $16,249.13 and advised that she was returning the money to the Office. She asserted that the overpayment occurred because of the mistake of the Office. However, appellant disputed any overpayment during the period of her obstruction of a medical examination, noting her disagreement with the Office's denial of her compensation for the period June 17 to October 28, 2002.

The Board notes that, even if the overpayment resulted from negligence on the part of the Office, this does not excuse the employee from accepting payment to which she knew or should have known that she was not entitled.[31] In the instant case, the Office advised appellant on May 23, 2002 of her responsibility to attend the second opinion appointment and that, if she failed to do so without an acceptable reason, her compensation benefits could be suspended in accordance with section 8123(d) of the Act.[32] Therefore, appellant should have been aware that, as of June 17, 2002, the date that she obstructed the second opinion examination, her compensation would be suspended until she cooperated with the Office's request for a second opinion examination. The record establishes that appellant was aware of these provisions as they were set forth in the Office referral letter.

The Office determined that an overpayment was created for the period October 29, 2002 to August 8, 2003. The Board finds that because appellant had returned to work full time on September 23, 2002 she knew or should have known that she was not entitled to total disability compensation after returning to full-time work. The record reflects that appellant contacted the Office on September 2, 2003. She acknowledged returning to work full time on September 23, 2002 and had been overpaid compensation. This demonstrates that appellant was aware that she was accepting compensation payments for which she was not entitled.

For these reasons, the Board finds that, under the circumstances of this case, the Office properly found that appellant reasonably knew or should have known that the direct deposit issued by the Office on August 15, 2003 for the period October 29, 2002 to August 8, 2003, which contained an overpayment in the amount of $16,419.81, was in error. As appellant was not without fault under the third standard outlined above, recovery of the overpayment of compensation may not be waived.

CONCLUSION

The Board finds that the Office properly suspended appellant's compensation benefits effective June 17, 2002, based on her obstruction of the second opinion medical examination scheduled June 17, 2002. The Board also finds that appellant received an overpayment of

[30] *See Claude T. Green*, 42 ECAB 174, 278 (1990).

[31] *See Russell E. Wageneck*, 46 ECAB 653 (1995).

[32] 5 U.S.C. § 8123(d).

compensation in the amount of $16,334.97 for the period June 17 to September 7, 2002 and from October 29, 2002 to August 8, 2003 that appellant was not "without fault" in the creation of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed as to fact of overpayment and modified as to amount of overpayment and the August 17, 2004 decision is affirmed as modified.

Issued: June 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board