

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

GEORGE D. MIZELL, Appellant

and

**DEPARTMENT OF THE NAVY, TRIDENT
REFIT FACILITY, Kings Bay, GA, Employer**

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**Docket No. 05-123
Issued: March 17, 2006**

Appearances:
George D. Mizell, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2004 appellant filed a timely appeal of a September 28, 2004 decision of the Office of Workers' Compensation Programs, which found that he received an overpayment of compensation in the amount of \$624.72. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$624.72; (2) whether the Office properly determined that appellant was at fault in creating the overpayment and was therefore not entitled to waiver; and (3) whether the Office properly required repayment of the overpayment by deducting \$208.30 every four weeks from his continuing compensation. On appeal, appellant contends that the Office should be held responsible for its own errors.

FACTUAL HISTORY

On May 25, 2000 appellant, then a 54-year-old shipwright leader, filed a traumatic injury claim alleging that on May 24, 2000 he was struck in the head while in the performance of duty. The Office accepted his claim for head injury as well as fractures of C2 and C5. The Office entered appellant on the periodic rolls on July 20, 2000. He returned to work on December 18, 2000. Appellant accepted light-duty work as a tool and parts attendant on February 11, 2002. By decision dated November 25, 2002, the Office found that his actual earnings in this position fairly and reasonably represented appellant's wage-earning capacity. The Office accepted the additional conditions of depressive disorder and anxiety and reentered appellant on the periodic rolls on June 4, 2003.

In a letter dated May 25, 2004, the Office made a preliminary finding that appellant had received an overpayment in the amount of \$624.72 because he was reimbursed for pharmacy services in error. The Office determined that appellant was at fault in the creation of this overpayment as he accepted a payment, which he knew or reasonably should have known, was incorrect. The Office stated, "The pharmacy billed [the Office] directly for the above services. The payment was sent to you instead of the pharmacy. Therefore, the amount paid to you represents an overpayment." The Office allowed appellant 30 days to disagree or to request an oral hearing. The Office also requested that he complete an overpayment recovery questionnaire.

In support of its preliminary finding of overpayment, the Office submitted two remittance vouchers. The first voucher was dated September 21, 2003 and indicated that Priority Healthcare Pharmacy submitted a bill on July 28, 2003 for the drug Tramadol in the amount of \$198.98, which was reduced to \$193.03. The Office paid this amount to appellant on September 28, 2003. The second remittance voucher was dated September 28, 2003 for bills of \$153.90 reduced to \$150.20 for the drug Clonazepam, and \$292.09 reduced to \$281.49 for the drug Geodon. The Office paid this amount to appellant on October 2, 2003. Appellant did not respond to the Office's preliminary finding.

By decision dated September 28, 2004, the Office finalized the overpayment, finding that appellant had received an overpayment in the amount of \$624.72, that he was at fault in the creation of the overpayment as he accepted payments which he knew or should have known to be incorrect, and that the overpayment was not subject to waiver. The Office directed recovery by withholding \$208.30 from appellant's continuing compensation payments effective October 3, 2004.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of

disability, or aid in lessening the amount of the monthly compensation.”¹ In order to be entitled to reimbursement of medical expenses incurred, a claimant must submit proper documentation in accordance with the requirements under the Office’s regulations found at 20 C.F.R. § 10.802.² Any request for reimbursement must be accompanied by evidence that the provider received payment for the service from the employee and statement of the amount paid.³

ANALYSIS -- ISSUE 1

The Office found that appellant received a \$624.72 overpayment of compensation because he received payment for drugs that should have been reimbursed to the pharmacy providing the medications. The Office noted that the pharmacy charged it directly for the drugs. Therefore, appellant should not have received reimbursement because he did not pay for the drugs from the pharmacy. The pharmacy, not appellant, was entitled to reimbursement. The Office erred in this case by paying the amount of money owed to the pharmacy as a reimbursement to appellant. Appellant was not owed the \$624.72. Therefore, an overpayment was created in the amount of \$624.72.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act⁴ provides: 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 of recovery would defeat the purpose of the Act or would be against equity and good conscience.”

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events, which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (2) Failed to provide information which he or she knew or should have known to be material; or (3) Accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).⁵

Whether or not the Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The

¹ 5 U.S.C. §§ 8101-8193, 8103(a).

² 20 C.F.R. §§ 10.802; 10.801; 10.800.

³ 20 C.F.R. § 10.802(b).

⁴ 5 U.S.C. § 8129(b).

⁵ 20 C.F.R. § 10.433(a).

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.⁶

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the overpayment. Appellant did not pay the pharmacy for the listed medications. Payment was supposed to be made directly to the pharmacy by the Office. Appellant was or should have been aware of this billing practice, as he did not pay any amount for these medical expenses. Furthermore, appellant should have known that he was only entitled to reimbursement for medical or pharmacy supplies if he submitted a proper bill to the Office for reimbursement. Appellant had not submitted any bills to the Office with a request for reimbursement. Therefore, when appellant received a \$193.03 check dated September 25, 2003 and a \$431.69 check dated October 2, 2003 in reimbursement for drugs, he knew or should have known that he was not entitled to the checks. As a result, appellant accepted payments which he knew or should have known to be incorrect.

As appellant noted on appeal, the Office was negligent in mailing the pharmacy reimbursements to appellant. Nevertheless, even if an overpayment results from the negligence of the Office, such error does not excuse the employee from accepting a payment that he knew or should have known to be incorrect.⁷ Appellant accepted a payment that he knew or should have known to be incorrect. His acceptance of the incorrect payments is not excused by the Office's error in sending the checks to him. As appellant was at fault in the creation of the overpayment, the overpayment is not subject to waiver.

LEGAL PRECEDENT -- ISSUE 3

The method by which the Office may recover overpayments is defined by regulation. The applicable regulations, 20 C.F.R. § 10.441(a), provides as follows:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made [the Office] shall decrease later payments of compensation, taking 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.”

The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.⁸ When an individual fails to provide requested financial

⁶ *Id.* at § 10.433(b).

⁷ *Diana L. Booth*, 52 ECAB 370, 374-75 (2001); *see also* 20 C.F.R. § 10.435(a).

⁸ 20 C.F.R. § 10.438.

information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.⁹

ANALYSIS -- ISSUE 3

In the present case, the Office requested that appellant provide financial information to enable it to determine the rate of recovery of the overpayment have due regard to the above-noted factors. Appellant, however, did not provide any such financial information as requested. In such a case, the Office's procedures note that the debt should be collected from continuing benefits as quickly as possible. The Board finds that the Office did not abuse its discretion in recovering the overpayment in three payments of \$208.30 from appellant's continuing compensation benefits.

CONCLUSION

The Board finds that appellant was at fault in the creation of the overpayment of \$624.72 because he accepted a reimbursement from medical benefits that he knew or should have known was incorrect, that this overpayment was not subject to waiver and that the Office properly collected the overpayments from appellant's continuing compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 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

⁹ *Frederick Arters*, 53 ECAB 397 (2002).