

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

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**CHARLES M. EDGAR, Appellant**

**and**

**DEPARTMENT OF COMMERCE, OFFICE OF  
THE INSPECTOR GENERAL, New York, NY,  
Employer**

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**Docket No. 05-1551  
Issued: March 20, 2006**

*Appearances:*  
*Charles M. Edgar, 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 July 18, 2005 appellant filed a timely appeal from the May 24, 2005 merit decision of the Office of Workers' Compensation Programs, which found that he was at fault in creating an overpayment of \$17,481.36. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the overpayment issue.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of \$17,481.36; and (2) whether he was at fault in the matter.

## **FACTUAL HISTORY**

On the prior appeal of this case,<sup>1</sup> the Board set aside an Office overpayment decision and remanded the case for a *de novo* calculation of the amount of the overpayment. The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.

On remand, the Office issued a preliminary determination that appellant received an overpayment of \$109,896.36 from August 22, 1983 to May 30, 1992. At the March 25, 2004 prerecoupment hearing, however, appellant submitted an Agreement for Judgment Regarding Dischargability, signed by appellant and the Office's Deputy Director for Federal Employees' Compensation, stipulating: "Any and all debts alleged to be due from [appellant] to the United States Department of Labor, Office of Workers' Compensation Programs '(OWCP)' characterized as 'overpayments' or otherwise were discharged on July 31, 1992 by order of the Court [United States Bankruptcy Court, District of Massachusetts, Eastern Division]."

Based on this document, the Office hearing representative determined that there was no outstanding overpayment and no basis for a prerecoupment hearing. The hearing representative returned the case to the Regional Office with instructions to terminate any and all actions to recover the overpayment and to refund any overpayment amounts already collected. The hearing representative also instructed the Office to issue a formal decision with regard to appellant's claim of an underpayment of compensation.

In a letter dated June 22, 2004, the Regional Office notified appellant that, pursuant to the hearing representative's instructions, actions to recover the overpayment were terminated and that a \$17,481.36 refund check would be processed and mailed to him on or after June 25, 2004.

The Office issued this check on June 25, 2004 with the notations "refund of overpayment collected" and "COMP FROM 08/22/1983 to 05/30/1992."

On that same date June 25, 2004, the Office telephoned appellant to inform him that he should not cash the June 25, 2004 check for \$17,481.36 and to return it to the Office. The Office explained that the National Office had already issued him a check for \$18,000.00, so the June 25, 2004 check for \$17,481.36 was a "duplicate payment." Appellant indicated that he would return "anything he was not entitled to." Appellant stated that if he received more than the \$18,000.00, he would return it.

In a letter dated June 25, 2004, the Office wrote appellant to confirm the fact that he was advised not to cash the June 25, 2004 check for \$17,481.36 and to return it in full, as it was a duplicate of the amount issued by the National Office "and you are not entitled to it."

Appellant received a check dated June 22, 2004 for \$18,019.00 with the notation "reimburse erroneous Treasury offset." He also received the check dated June 25, 2004 for \$17,481.36. Photocopies of the canceled checks show that he endorsed and cashed both of them.

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<sup>1</sup> Docket No. 01-0027 (issued May 24, 2002).

On August 30, 2004 the Office issued a preliminary determination that appellant received an overpayment of \$17,481.36. The Office found that he was at fault in the matter because he signed and cashed the June 25, 2004 check knowing that it was a duplicate payment he was supposed to return.

Appellant requested a prerecoupment hearing, which was held on March 17, 2005. At the hearing, appellant's attorney noted that the U.S. Treasury intercepted a tax refund payable to appellant in the amount of \$18,019.00 to offset an alleged overpayment that was discharged in 1992. He stated that appellant received a refund in this amount on June 22, 2004. He further stated that appellant also received a second check for \$17,481.36, which was not the amount of the refund he was seeking:

“[Appellant] was of the mindset that this was related to his underpayment. It was either a part payment or it was some payment related to that because the benefit statement indicates it is pay type one which I understand is wages. In any event, he was contacted telephonically and OWCP took the position that, in fact, this was just an inadvertent mistake and that the check ought to be returned. [Appellant's] position from that point has been that if he returns the check, he may waive his [underpayment] claim of September 28, 1992. So what we did rather than return the funds, I took the position that we should go back and address it to the bankruptcy court.”

The attorney noted that appellant believed that the \$17,000.00 check was a part payment for his claim of underpayment and also in part payment for the Office having arbitrarily stopped his benefits when he filed his bankruptcy in August 1992.

In a decision dated May 24, 2005, the hearing representative found that appellant was at fault in the creation of a \$17,481.36 overpayment. The hearing representative noted that on May 12, 2005 the Office received a check from appellant in the amount of \$17,481.36, thereby satisfying the debt.

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

When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>2</sup> When an overpayment has been made to an individual who is not 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 same.<sup>3</sup>

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<sup>2</sup> 5 U.S.C. § 8129(a).

<sup>3</sup> 20 C.F.R. § 10.441(b) (1999).

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

The Office collected \$18,019.00 from appellant's 2001 federal tax refund as a partial recovery of the overpayment that occurred from August 22, 1983 to May 30, 1992. But when appellant submitted an Agreement for Judgment Regarding Dischargability stipulating that this overpayment was discharged in bankruptcy on July 31, 1992, the Office hearing representative instructed the Office to terminate any and all actions to recover the overpayment and to refund any overpayment amounts already collected. The National Office thereupon refunded the \$18,019.00 with a check dated June 22, 2004.

At the same time, the Regional Office noted a collection of \$17,481.36 on or about April 11, 2004. Independently, following the hearing representative's instructions, the Regional Office issued a check to appellant for \$17,481.36 on June 25, 2004.

The Board finds that appellant received an overpayment of \$17,481.36. The National Office had already fully refunded the amount collected when the Regional Office attempted to do the same. The record does not explain the reason Office transaction logs showed a cash deposit that was slightly less than appellant's 2001 federal tax refund, but the date of that cash deposit is coincidental to the collection of the tax refund. There is no suggestion that this cash deposit came from another source.<sup>4</sup> Under the circumstances, the Board views the June 25, 2004 check for \$17,481.36 as a duplicate payment to which appellant was not entitled. The Board will therefore affirm the Office's May 24, 2005 decision on the issue of amount of overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

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). The fact that the Office may have erred in making the overpayment does not by itself relieve the individual who received the overpayment from liability for repayment if the individual was also at fault in accepting the overpayment.<sup>5</sup>

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

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<sup>4</sup> The record gives no indication, for example, that appellant agreed to make a partial payment in April or May 2002 toward an overpayment debt that he argued was discharged in 1992.

<sup>5</sup> *Id.* at § 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

When the Office issued the June 25, 2004 check for \$17,481.36, it caught the mistake almost immediately. The Office telephoned appellant that same day to advise him not to cash that particular check and to return it. The Office explained to him that the National Office had already issued him a check for \$18,000.00 and that the June 25, 2004 check for \$17,481.36 was a duplicate. Appellant understood, indicating that he would return anything he was not entitled to. Further, he stated that if he received more than the \$18,000.00, he would return it.

The Office wrote a letter to appellant on June 25, 2004 to confirm this conversation. The Office again advised appellant not to cash the June 25, 2004 check for \$17,481.36 and to return it in full, as it was a duplicate and "you are not entitled to it."

The Board finds that the June 25, 2004 check was an incorrect payment, which appellant knew or should have known when he accepted the payment. Appellant's argument that he believed the Office was making a part payment related to his claim of an underpayment (on which claim the Office had issued no formal decision) or was making a part payment for having arbitrarily stopped his benefits when he filed for bankruptcy in 1992, strains credulity by completely ignoring the Office's explicit communication to the contrary. Notwithstanding one of the notations on the check or the benefits statement that accompanied it, the Office left no ambiguity about this payment: appellant was not entitled to it and he was to return it to the Office. Appellant's argument is inconsistent with his representation to the Office on June 25, 2004 that if he received more than the \$18,000.00, he would return it. Further, any fear he might have had about somehow waiving his underpayment claim by returning money that did not belong to him was unfounded and unreasonable under the circumstances.

The record establishes that appellant received, endorsed and cashed the June 25, 2004 check for \$17,481.36. The Board finds that he is at fault in the matter of the resulting overpayment on the grounds that he accepted a payment that he knew or should have known to be incorrect. The Office's negligence in issuing the June 25, 2004 check does not mitigate this finding.<sup>7</sup> The Board will affirm the Office's May 24, 2005 decision on the issue of fault.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of \$17,481.36 and was at fault in the matter.

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<sup>6</sup> *Id.* at § 10.433(b).

<sup>7</sup> *See* 20 C.F.R. § 10.435(a); *William E. McCarty*, 54 ECAB 525 (2003).

<sup>8</sup> As appellant is at fault in the matter and as he has already repaid the debt in full, neither waiver nor recovery of the overpayment is an issue in this case.

**ORDER**

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

Issued: March 20, 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