

on the grounds that he refused an offer of suitable work under 5 U.S.C. § 8106.¹ The Board also affirmed the Office's April 12, 1998 decision denying his request for a hearing as untimely. The findings of fact and the conclusions of law from the prior decision are hereby incorporated by reference.

The record contains a remittance voucher showing that on September 25, 2003 the Office paid appellant \$459.72. The voucher indicated that the payment was for pharmacy claims from Priority Health Care pharmacy for prescriptions filled on July 29 and August 19, 2003 for the drugs Lortab and Soma. A remittance voucher dated October 2, 2003 shows that the Office paid appellant \$325.65 for a pharmacy claim for a prescription filled on August 26, 2003 for the drug Soma. The October 2, 2003 remittance voucher does not identify the pharmacy that requested reimbursement.

The Office notified appellant on May 25, 2004 of its preliminary determination that he received an overpayment of compensation in the amount of \$785.37 as he was erroneously reimbursed for pharmacy services. The Office noted that the pharmacy billed it directly for expenses but that it had reimbursed appellant instead of the pharmacy. The Office further informed him of its preliminary determination that he was at fault in the creation of the overpayment as he accepted payments that he knew or should have known to be incorrect. The Office advised appellant of his right to submit additional evidence if he disagreed that an overpayment occurred, if he disagreed with the amount of overpayment or if he believed that the overpayment occurred through no fault of his own.

On June 18, 2004 appellant requested a precoupment hearing. He challenged that the overpayment occurred and the finding that he was at fault.

At the hearing, held on March 29, 2005, appellant related that he received a check from the Office in September or October 2003 but believed that it was payment for a claim that he submitted around July 2003. He indicated that the Office previously paid a pharmacy in error instead of reimbursing him. Appellant noted that he was not aware of when a pharmacy billed for services because it was processed through the automated computer system in London, Kentucky. The hearing representative questioned why appellant did not notice the name of the pharmacy, Priority Health Care pharmacy, on his remittance voucher. Appellant related that he did receive the remittance voucher but stated that he always paid himself for medications obtained from Winn-Dixie, a Priority Health Care pharmacy. He noted that the Rite Aid pharmacy submitted claims to the Office for reimbursement. The hearing representative informed appellant that he needed to submit evidence that he paid for the medications and requested reimbursement. She further noted that she would send him an overpayment recovery questionnaire in order for him to submit information in support of waiver, if necessary.

By decision dated July 1, 2005, the hearing representative finalized the finding that appellant received an overpayment of compensation in the amount of \$785.37 and that he was at fault in its creation. She noted that he had not submitted any financial information and concluded that the overpayment was due in full.

¹ *Ricky C. Greenwood*, Docket No. 98-1750 (issued August 11, 2000).

LEGAL PRECEDENT -- ISSUE 1

To be entitled to reimbursement for medical expenses incurred, a claimant must submit proper documentation in accordance with the requirements under Office regulations found at 20 C.F.R. § 10.802. Any request for reimbursement must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid.²

Section 8129 of the Federal Employees' Compensation Act³ provides that "When an overpayment has been made to an individual under this subchapter 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."

ANALYSIS -- ISSUE 1

The Office found that appellant received a \$785.37 overpayment of medical benefits because he received checks as payment for prescription drugs that should have been sent to the pharmacy providing the medication. The Office submitted remittance vouchers dated September 25 and October 2, 2003 which indicate that it sent him a total of \$785.37 as reimbursement for pharmacy expenses. According to the Office, the pharmacy directly billed it for the services provided, and thus he should not have received reimbursement for the prescription drugs because he did not pay for the drugs from the pharmacy. Appellant did not specifically challenge that he received the checks in question or the amount that he received. Instead, he argued that he submitted a claim in July 2003 for the same amount of pharmacy expenses as the checks he received from the Office; however, the record does not contain a request from him for reimbursement for prescription drug expenses and he has not submitted any evidence that he paid any pharmacy directly for the prescriptions filled on July 29 and August 19 and 26, 2003. To be entitled to reimbursement for medical expenses incurred, a claimant must submit proper documentation in accordance with the requirements under Office regulations found at 20 C.F.R. § 10.802. The Office, consequently, properly found that appellant received an overpayment of \$785.37.⁴

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act⁵ provides that "[a]djustment 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." Section 10.433 of the Office's implementing regulation⁶

² 20 C.F.R. § 10.802(b).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Gerald D. Eason*, Docket No. 05-228 (issued March 23, 2005).

⁵ 5 U.S.C. § 8129(b).

⁶ 20 C.F.R. § 10.433.

provides that in determining whether a claimant is at fault, the Office will consider all pertinent circumstances. An individual is with fault in the creation of an overpayment who:

“(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.”

ANALYSIS -- ISSUE 2

The Office found that appellant accepted a payment which he knew or should have known to be incorrect in reaching its determination that he was at fault in the creation of a \$785.37 overpayment. The Office sent appellant a check on September 25, 2003 for \$459.72 and a check on October 2, 2003 for \$325.65. With the checks, the Office included remittance vouchers which indicated that the checks were in payment of pharmacy claims for prescription medication. Appellant did not contest that he received the checks and remittance vouchers but asserted that he believed that the check was payment for a claim that he submitted six months earlier. A review of the record, however, reveals no evidence that appellant paid out-of-pocket expenses for medication and later sought reimbursement. He did not provide any explanation of what particular payments for medical supplies he believed that the checks covered or submit any receipts or copies of cancelled checks from the pharmacy for the period he maintained that he claimed reimbursement. Appellant’s receipt of the remittance vouchers constitutes evidence that he should have known the payment was for a pharmacy claim as it was written on the remittance voucher. While he contended that the Office was negligent in creating the overpayment, the Board has held that this does not excuse the employee from accepting a payment that he or she knew or should have known to be incorrect.⁷ Under these circumstances, the Office properly found that he was at fault in the creation of the overpayment and therefore it was not subject to waiver.⁸

⁷ *Dale Mackelprang*, 55 ECAB ____ (Docket No. 03-1614, issued December 16, 2003).

⁸ The issue of recovery of the overpayment is not before the Board as the Board’s jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits. *Desiderio Martinez*, 55 ECAB ____ (Docket No. 30-2100, issued January 9, 2004).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$785.37. The Board further finds that the Office properly determined that appellant was at fault in creating the overpayment and thus not entitled to waiver.⁹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2005 is affirmed.

Issued: March 10, 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 Appellant submitted evidence with his appeal, including a list of his prescriptions filled by pharmacies from 2002 to 2005, which was not before the Office at the time of its July 1, 2005 decision. With his August 10, 2005 cover letter, he indicated that he was enclosing documents sent to the hearing representative but they are not currently contained in the case record. The Board has no jurisdiction to review evidence for the first time on appeal that was not before the Office at the time of its decision; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a request for reconsideration under 5 U.S.C. § 8128 and 20 C.F.R. § 10.606.