



In a letter dated October 3, 2005, the Office advised appellant that he would be paid compensation until further notice. The letter advised him to notify the Office immediately if he returned to work to avoid an overpayment of compensation. Appellant was further advised that, if he worked during any period covered by a compensation payment, he must return the payment to the Office.

The record contains evidence that appellant was released to work by Dr. Brian F. Pontarelli, a treating podiatrist, and that he returned to full-time limited-duty work on January 11, 2006.

The record contains computer printouts showing that appellant received compensation in the amount of \$4,040.42, for the period July 23 through September 2, 2005 and compensation in the amount of \$1,616.17, for the period December 25, 2005 through January 10, 2006.

By letter dated February 2, 2006, the Office advised appellant of a preliminary determination that an overpayment of compensation had occurred from January 11 to 21, 2006. It stated that he was paid for temporary total disability from December 25, 2005 to January 21, 2006, but had returned to work on January 11, 2006. The Office made a preliminary determination that appellant was at fault because he should have known he was not entitled to receive compensation for temporary total disability after he had returned to work. The Office's calculations as to the amount of the overpayment states that appellant received \$2,680.38, in gross compensation. This amount was reduced by \$1,608.23, for compensation owed for the period December 25, 2005 to January 10, 2006 resulting in an overpayment of \$1,072.15. Appellant was advised that he could request a telephone conference, a final decision based on the written evidence only, or a hearing within 30 days of the date of the letter, if he disagreed that the overpayment occurred, if he disagreed with the amount of the overpayment and if he believed that recovery of the overpayment should be waived. The Office requested that he complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof within 30 days.

On February 25, 2006 appellant requested a telephone conference and submitted a completed overpayment recovery questionnaire. On the overpayment recovery questionnaire, he indicated that he had total assets of \$100.00, monthly income of \$108.00 and monthly expenses of \$3,454.00. Appellant contended that he was not at fault in the creation of the overpayment as he had informed both the employing establishment and the Office regarding changes in his health and work status. He also noted that he had been underpaid by the Office and received payment for this underpayment in January.

On March 9, 2006 a telephone conference was held between a claims examiner and appellant regarding whether the overpayment should be waived. In the memorandum of the telephone conference, the claims examiner noted that appellant agreed to a repayment schedule of \$25.00 per month.

In an undated letter received on March 28, 2006, appellant disagreed with the summary of the telephone conference. He requested further review on the overpayment.

By decision dated April 18, 2006, the Office finalized that the overpayment of \$1,072.15 was created and that appellant was at fault in creating the overpayment.

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

Section 8116(a) of the Federal Employees' Compensation Act provides that, while an employee is receiving compensation under the Act, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.<sup>1</sup>

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

In order for the Board to properly review the overpayment decision on appeal, the Office must make appropriate findings based on the evidence of record. The Office determined that an overpayment of \$1,072.15, was created because appellant received compensation from December 25, 2005 to January 21, 2006, although he had returned to work on January 11, 2006. In order to confirm the continuing compensation payments, the record should establish the specific payments that were made, the date issued and the compensation period covered by the specific payments. The Board finds that the record is devoid of any evidence that compensation was paid for the period in question except for a compensation computer worksheet dated January 19 and a February 2, 2006 overpayment calculation worksheet. The compensation computer worksheet notes the coverage date as December 25, 2005 thru January 10, 2006 in the amount of \$1,616.17. The February 2, 2006 overpayment calculation worksheet notes that appellant was paid \$2,680.38, through January 21, 2006 on the periodic rolls. Payment for the period December 25 to January 10, 2006 was determined to be \$1,608.23. The Office subtracted \$1,608.23 from \$2,680.38 to arrive at an overpayment of \$1,072.165. There is no other evidence with respect to the individual payments issued during the relevant time period. There is no record of any computer printout establishing the payment of compensation for the period December 25, 2005 to January 21, 2006.<sup>2</sup> Therefore, the Office has failed to establish that an overpayment occurred in this case.<sup>3</sup>

### **CONCLUSION**

The Board finds that the Office failed to establish that an overpayment in compensation in the amount of \$1,072.15 had been created.

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<sup>1</sup> 5 U.S.C. § 8116(a); see *Danny E. Haley*, 56 ECAB \_\_\_\_ (Docket No. 04-853, issued March 18, 2005) (Office procedures provide that an overpayment of compensation is created when a claimant returns to work but continues to receive wage-loss compensation).

<sup>2</sup> See *Salvator A. Schembari*, Docket No. 05-1309 (issued December 6, 2005) (the Board found that the Office failed to establish that an overpayment existed as the record was devoid of any evidence that the specific payments were made, the date issued and the period covered by the specific payments); *William P. Tippets*, Docket No. 03-1755 (issued July 29, 2004) (the Board found that the Office failed to establish that an overpayment existed as the record contained no evidence of the specific amount appellant received for the period in question or the specific amount he was entitled to receive at the correct rate).

<sup>3</sup> In light of the Board's resolution of the first issue, the remaining issue in this case is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2006 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 14, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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