

passenger's luggage. She indicated that she was employed as a security screener and the date of injury was April 25, 2005.

On July 29, 2005 the Office received a direct deposit sign-up form completed by appellant on June 22, 2005. By decision dated August 17, 2005, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient. The Office stated that medical treatment was not authorized and any prior authorization was terminated.

In a memorandum dated December 6, 2005, the Office stated that, when it received appellant's direct deposit form, it had mistakenly believed the form was submitted by another claimant of the same name. The Office stated that it had erroneously made payments to appellant that were intended for the other claimant of the same name. According to the Office, three payments of \$1,653.72 had been direct deposited into appellant's account on September 3 and 30 and October 28, 2005.

By letter dated December 14, 2005, the Office advised appellant that a preliminary overpayment of compensation totaling \$4,961.16 had been created. The Office also made a preliminary determination that appellant was at fault in creating the overpayment because she accepted payments she should have known were incorrect.

Appellant requested a hearing on the issues of fault and waiver. A hearing was scheduled for August 23, 2006 and notice was sent to the address of record. Appellant did not appear for the hearing. In a memorandum dated August 28, 2006, an Office hearing representative indicated that appellant had telephoned on August 25, 2006 and stated her address had changed and she did not get notice of the hearing. Appellant was advised to notify the Office of her change of address. By letter dated August 31, 2006, the Office hearing representative indicated that rescheduling of the hearing was not possible and a review of the written record would be conducted.

By decision dated October 18, 2006, the hearing representative finalized the preliminary overpayment determinations. The hearing representative found an overpayment of \$4,961.16 was created and appellant was not entitled to waiver as she was at fault in creating the overpayment. Appellant was directed to repay the overpayment in full.¹

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of the Federal Employees' Compensation Act provides that the United States shall pay compensation for "disability or death of an employee resulting from personal injury sustained while in the performance of his duty...."²

¹ With respect to recovery of the overpayment, the Board's jurisdiction is limited to recovery from continuing compensation benefits. See *Levon H. Knight*, 40 ECAB 658, 665 (1989).

² 5 U.S.C. § 8102.

ANALYSIS -- ISSUE 1

Appellant filed a claim for compensation alleging that she sustained an injury while in the performance of duty. The claim was denied by the Office in an August 17, 2005 decision on the grounds that the medical evidence of record was insufficient to meet appellant's burden of proof to establish her claim.³ Since the claim was denied, appellant was not entitled to compensation under the Act. The record indicated that she received three payments of compensation for wage-loss totaling \$4,961.16. Accordingly, an overpayment of compensation was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act 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 or recovery would defeat the purpose of the Act or would be against equity and good conscience."⁴ Waiver of an overpayment is not permitted unless the claimant is "without fault" in creating the overpayment.⁵

On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: "(1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (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 was incorrect."

ANALYSIS -- ISSUE 2

The Office determined that appellant was at fault under the third standard noted above: she accepted a payment she knew or should have known was incorrect. In this case, the Office direct deposited compensation payments of \$1,653.72 on September 3 and 30 and October 28, 2005. As the Board has explained, a direct deposited payment is accepted when it is deposited, the same as a compensation check that is sent to a claimant and then deposited in a bank account.⁶ The issue is whether, at the time of acceptance, appellant knew or should have known that the payment was incorrect. In this case, the Office had denied the claim for compensation by decision dated August 17, 2005. Appellant had no reasonable basis to believe she was entitled to any compensation payments from the Office under the circumstances of this case. When the payments were direct deposited into her account, she should have known they were incorrect.

³ The Board does not have jurisdiction over this decision. *See* 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. § 8129(b).

⁵ *Norman F. Bligh*, 41 ECAB 230 (1989).

⁶ *T.C.*, 57 ECAB ___ (Docket No. 05-249, issued July 24, 2006). A claimant authorizes the electronic transfer of a payment to a named financial institution, and when control of the funds passes to the claimant upon deposit, acceptance is established.

The Board accordingly finds that, under section 10.433(3), appellant accepted payments she knew or should have known were incorrect. She is not “without fault” under 5 U.S.C. § 8129(b) in creating the overpayment and therefore is not entitled to waiver.

LEGAL PRECEDENT-- ISSUE 3

The Office’s regulations provide a claimant may request a prerecoupment hearing with respect to an overpayment.⁷ Prerecoupment hearings are conducted in the same manner as hearings provided under section 10.615 to 10.622.⁸ Section 10.622 provides that scheduling is at the discretion of the hearing representative; once the hearing is scheduled it cannot be postponed at the claimant’s request except for reasons stated in 10.622(c).⁹ When the postponement request does not meet the test of section 10.622(c) and cannot be accommodated on the docket, the hearing will take the form of a review of the written record.¹⁰

ANALYSIS -- ISSUE 3

In this case, the notice of oral hearing was sent to appellant’s address of record. The oral hearing was scheduled for August 23, 2006. Appellant did not appear for the scheduled hearing. The hearing representative indicated that appellant had requested a postponement two days after the scheduled hearing. Appellant did not allege any of the reasons provided in section 10.622(c). She stated that she had moved and did not receive notice of the hearing. As noted above, the hearing representative has discretion regarding scheduling and she indicated the request to reschedule could not be accommodated. In accord with the regulations, the hearing takes the form of a review of the written record.

CONCLUSION

The record supports a finding that an overpayment of \$4,961.16 was created and appellant was not entitled to waiver as she was at fault in creating the overpayment. The hearing representative properly conducted a review of the written record in this case.

⁷ 20 C.F.R. § 10.432.

⁸ 20 C.F.R. § 10.439.

⁹ The reasons provided in section 10.622(c) are nonelective hospitalization, or death of a parent, spouse or child.

¹⁰ 20 C.F.R. § 10.622(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2006 is affirmed.

Issued: August 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board