

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

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**P.M., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 07-915  
Issued: August 7, 2007**

*Appearances:*  
*Appellant, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 20, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated January 18, 2007<sup>1</sup> finding that she had received an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$4,584.54; (2) whether she was at fault in the creation of the overpayment such that she is not entitled to waiver and (3) whether the Office properly determined to recover the

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<sup>1</sup> Following the date of appellant's appeal to the Board on February 20, 2007, the Office issued its February 28, 2007 final overpayment decision. The Board finds that this decision is null and void, as both the Board and the Office cannot have jurisdiction over the same issue in the same case at the same time. 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993). The Board further notes that it is unable to review the additional information submitted by appellant following the January 18, 2007 decision. Under 20 C.F.R. § 501.2(c), the Board is precluded from reviewing evidence that was not before the Office at the time of its final decision.

overpayment by withholding \$150.00 per month from appellant's continuing compensation benefits.

### **FACTUAL HISTORY**

On May 2, 2001 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that she sustained a right ankle sprain tripping in the performance of duty. She underwent surgical repair of her ankle on October 31, 2001. By decision dated January 4, 2002, the Office accepted appellant's claim for right ankle sprain and peroneus brevis tear of the right ankle.

Appellant requested a schedule award on March 5, 2002 and by decision dated October 25, 2002, the Office granted appellant a schedule award for 10 percent impairment of her right lower extremity. She underwent an additional surgery on December 18, 2002 to remove deep suture knots and explore the peroneal tendon. The Office authorized this surgery on February 20, 2003.

Appellant filed a claim for compensation requesting wage-loss compensation from February 23 to March 7, 2003 and from March 8 to 21, 2003. In a letter dated June 6, 2003, the employing establishment noted that appellant was receiving payment through the periodic rolls under her separate file number 10-048736. The employing establishment informed the Office that appellant had received two supplemental payments under her current claim for the period February 23 through April 8, 2003.

On September 3, 2003 appellant requested a schedule award. By decision dated July 30, 2004, the Office granted appellant a schedule award for an additional three percent impairment of her right lower extremity. The award ran from October 2 to December 1, 2003.

The record contains documents establishing that appellant received two checks under file number 10-048736, for the period February 23 to March 22, 2003, in the amount of \$2,385.44 and from March 23 to April 19, 2003 in the amount of \$2,443.00, in the total amount of \$4,828.44. Appellant also received two checks under file number 10-2000050 for the period February 23 to March 21, 2003 in the amount of \$2,285.54 and from March 22 to April 18, 2003 in the amount of \$2,299.00, totalling \$4,584.54.

On June 1, 2006 the Office issued a preliminary notice of overpayment informing appellant that she had received an overpayment in the amount of \$4,584.54, under this file number 10-2000050 as she had also received compensation payments under file number 10-0487306 for the period February 23 through April 19, 2003. The Office found that appellant was at fault in the creation of the overpayment as she accepted a payment which she was aware or should have reasonably been aware was incorrect.

Appellant requested a precoupment hearing and waiver. She stated that she never knowingly took an incorrect payment. In a letter dated June 14, 2006, appellant stated that she believed the extra compensation was a schedule award payment for her ankle and requested waiver. She testified at her oral hearing on November 3, 2006. Appellant stated that, although she was aware that she was only entitled to one compensation check a month, she believed that

the extra payments in March 2003 were schedule award payments. The hearing representative requested that appellant complete an overpayment recovery questionnaire and provide supporting documentation for her mortgage or rent, her car payments and credit card payments if any. She allowed 30 days for the submission of this additional information.

By decision dated January 18, 2007, the hearing representative found that appellant had received an overpayment in the amount of \$4,584.54, as she received compensation benefits for two separate claims for the same period. The hearing representative found that appellant was at fault in the creation of the overpayment as she was aware that she was not entitled to receive dual wage-loss compensation benefits. The hearing representative found that appellant's explanation that she believed the extra payments were from a schedule award were not credible as appellant was not issued her schedule award until July 30, 2004, more than one year after the dual payments were made. The hearing representative noted that appellant had not submitted the requested financial information and determined that the overpayment should be recovered by withholding \$150.00 from her continuing monthly compensation benefits.

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

Section 8116<sup>2</sup> of the Federal Employees' Compensation Act defines the limitations on the right to receive compensation benefits. This section of the Act provides in pertinent part as follows:

“(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, *he may not receive salary, pay, remuneration of any type from the United States, except --*

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the Veterans Administration unless such benefits are payable for the same injury or the same death....”  
(Emphasis added.)

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

Appellant does not contest that an overpayment of compensation was created in this case. She received compensation benefits from the Office under both of her claim numbers for the period February 23 through March 18, 2003. Since appellant is not entitled to receive compensation for wage-loss under two separate claims for the same time period, she received an overpayment from February 23 through March 18, 2003. The Office determined that appellant received an overpayment in the amount of \$4,584.54, during this period and the Board finds that this represents the amount of the overpayment.

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<sup>2</sup> 5 U.S.C. § 8116.

## LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act<sup>3</sup> 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.”

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).<sup>4</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 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>5</sup>

## ANALYSIS -- ISSUE 2

The facts of this case establish that appellant accepted a payment which she knew or should have known to be incorrect. She has testified that she was aware that she was not entitled to receive compensation for wage loss from the Office under both her claims for the same time period. Therefore, appellant knew that she was not entitled to dual benefits under her two claims. She alleged that she was not aware that the payments from February 23 to April 18, 2003 were incorrect as she believed that she was entitled to a schedule award. As noted by the hearing representative, the Office did not issue a decision regarding appellant’s request for a schedule award until July 30, 2004 more than one year after the period during which appellant received dual payments. Therefore, appellant’s explanation is not reasonable and the Office properly found that she was at fault in the creation of the overpayment. As she was at fault in the creation of the overpayment, appellant is not entitled to waiver.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8129(b).

<sup>4</sup> 20 C.F.R. § 10.433(a).

<sup>5</sup> *Id.* at § 10.433(b).

<sup>6</sup> *Lawrence J. Dubuque*, 55 ECAB 667, 673 (2004).

### **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. When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>7</sup>

### **ANALYSIS -- ISSUE 3**

Appellant did not submit an overpayment recovery questionnaire or other financial information as requested by the hearing representative. As the overpaid individual, she is responsible for providing financial information as requested by the Office. The hearing representative determined that a repayment rate of \$150.00 from appellant’s monthly compensation benefits was appropriate. The Board finds that there is no evidence in the record to show that a recovery rate of \$150.00 every 28 days is unreasonable. Appellant has not shown that the Office improperly required withholding of \$150.00 from her continuing compensation payments every 28 days.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$4,584.54. The Board further finds that appellant was at fault in the creation of the overpayment and that the Office properly required recovery of the overpayment by deducting \$150.00 from appellant’s continuing compensation payments every 28 days.

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<sup>7</sup> *Ralph P. Beachum. Sr.*, 55 ECAB 442, 448 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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