



were paid. Appellant's compensation benefits were calculated as \$840.53 per week. By letter dated January 31, 2006, the Office also accepted lumbosacral spondylosis.

By letter dated March 14, 2006, the employing establishment informed the Office that appellant had obtained other employment. Appellant's private sector employment had wages exceeding the position he held at the employing establishment.<sup>1</sup> By letter dated March 20, 2006, he indicated that he was currently working as a manger in infrastructure support at a salary of \$90,000.00 per year. When appellant started with this company in November 2004 he was earning \$80,000.00 per year as a senior software engineer.

On April 13, 2006 the Office issued a preliminary determination that appellant received an overpayment in the amount of \$22,075.75, because he continued to receive compensation payments for the period November 3, 2004 through May 14, 2005 after he started work in the private sector. On May 10, 2006 appellant requested that a decision be made on the written evidence. In an accompanying letter he argued that the overpayment should be waived as he was without fault in the creation of the overpayment.

By decision dated July 10, 2006, the Office finalized that an overpayment in the amount of \$22,075.75 was created. It found that appellant was at fault in the creation of the overpayment and that he was not entitled to waiver.

### **LEGAL PRECEDENT**

Section 8129(a) of the Federal Employees' Compensation Act provides that an employee who is receiving compensation for an employment injury may not receive wages for the same period.<sup>2</sup>

In determining matters concerning an employee's receipt of compensation, the Office is required by statute and regulation to make findings of fact.<sup>3</sup> Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.<sup>4</sup> These requirements are supported by Board precedent.<sup>5</sup>

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<sup>1</sup> The employing establishment indicated that the current wages for the position appellant held when injured was \$45,568.00 per year.

<sup>2</sup> 5 U.S.C. § 8129(a).

<sup>3</sup> 5 U.S.C. § 8124(a) provides: The [Office] shall determine and make a finding of fact and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office shall contain findings of fact and a statement of reasons.

<sup>4</sup> See Federal (FECA) Procedure Manual, Part 2 -- *Claims, Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>5</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

## ANALYSIS

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 \$22,075.75 was created because appellant received compensation from a new employer from November 3, 2004 through May 14, 2005 while he continued to receive compensation payments under the Act. 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 and in what amount.

Under these circumstances, the Board finds that the Office's decision does not include findings of fact nor provide clear reasoning such that appellant might understand the precise defect of the claim and the kind of evidence which would tend to overcome it.<sup>6</sup> Therefore, the case will be remanded to the Office for a more detailed explanation regarding the basis for its determinations regarding the fact and amount of the alleged overpayment. Given that the case is not in posture for decision regarding the fact and amount of the overpayment, it is premature for the Board to consider the second issue of the present case, *i.e.*, whether the Office properly denied appellant's request for waiver of the overpayment. After the Office has made a reasoned determination regarding the fact and amount of overpayment, it should then make a determination on appellant's waiver request under the relevant standards of the Act. After such development it deems necessary, the Office should issue an appropriate decision.

## CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received a \$22,075.75 overpayment of compensation for the period November 3, 2004 through May 14, 2005 and that the case shall be remanded to the Office for further development regarding this matter. Given the disposition regarding the fact and amount of the overpayment, the Board finds that it is premature to consider whether the Office properly determined that appellant was at fault in the creation of the overpayment thereby precluding waiver of the recovery.

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<sup>6</sup> See *supra* note 4 and accompanying text.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 10, 2006 is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: February 16, 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