

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

---

**D.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-385  
Issued: June 11, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 27, 2006 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated November 14, 2006 denying waiver of overpayment because appellant was found to be at fault in the creation of the overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the overpayment issue in this case.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$1,312.13; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment, thereby, precluding waiver of the recovery as she failed to submit information that she knew or should have known to be material.

**FACTUAL HISTORY**

On October 6, 2005 appellant, then a 49-year-old customer service sales representative, filed an occupational disease claim alleging that she suffered from a complete rotator cuff tear as

a result of her federal employment. On January 10, 2006 the Office accepted her claim for left rotator cuff tear. Appellant stopped work on November 11, 2005 and underwent surgical repair for her shoulder. She returned to work with restrictions on April 3, 2006.

On December 23, 2005 appellant filed a claim for compensation for the period November 11 through December 23, 2005 and compensation was paid for temporary total disability for this time period in the amount of \$3,487.81. The check was issued on January 10, 2006. On the same date, appellant filed a claim for compensation for the period December 24, 2005 through January 20, 2006.

On January 26, 2006 the employing establishment contended that appellant received a pay check from them for certain dates during the period November 11 through December 23, 2005. The amount paid by the employing establishment was for periods of sick leave, annual leave and holidays. The employing establishment noted that it became aware of this error when appellant informed them on or about January 26, 2006 that she was improperly placed in a pay status for the period January 7 to 20, 2006 even though she was off from work.

On February 21, 2006 the Office made a preliminary determination that appellant had received an overpayment in the amount of \$1,312.13, for which she was at fault. The Office explained that this overpayment occurred because appellant received compensation for temporary total disability during the period November 11 to December 23, 2005 of \$3,741.28. However, the Office noted that appellant was only entitled to payment for 144.22 hours for this time period as she received paid leave and accordingly should have only been paid \$2,175.65. The Office gave appellant credit for health benefits insurance (\$125.97), basic life insurance (\$22.50) and optional health insurance (\$105.00) which should not have been withheld due to appellant taking leave. Accordingly, the Office found that appellant's total overpayment was \$1,312.13.

On May 6, 2006 appellant requested a hearing which was held on August 24, 2006. On September 1, 2006 she submitted answers to her overpayment questionnaire.

By decision dated November 14, 2006, the hearing representative concluded that appellant was at fault in the creation of the overpayment and thus precluded from obtaining a waiver. The hearing representative also found that appellant failed to provide pertinent information.

### **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>1</sup>

---

<sup>1</sup> 5 U.S.C. § 8129(a).

In determining matters concerning an employees' receipt of compensation, the Office is required by statute and regulation to make findings of fact.<sup>2</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>3</sup> These requirements are supported by Board precedent.<sup>4</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision. In order to properly review the overpayment decision on appeal the Office must make appropriate findings of fact and conclusions of law based on the evidence of record.<sup>5</sup> The Board finds that the hearing representative never addressed the issue of whether an overpayment was properly determined. In fact, the preliminary determination by the Office that an overpayment was made in the amount of \$1,312.13 was never finalized. The hearing representative never discussed whether the calculation of the overpayment amount was proper.

Under these circumstances, the Board finds that the Office did not address a necessary issue, *i.e.*, whether the preliminary determination that appellant received an overpayment was correct, for which she was found to be at fault, and whether the amount of the overpayment was correct. Therefore, this case will be remanded to the Office for a discussion of the overpayment. Given that the case is not in posture for the Board to discuss the overpayment issue, *i.e.*, fact and amount, it is premature for the Board to consider the second issue of the present case of whether appellant was at fault in the creation of the overpayment, thereby, precluding waiver of the recovery. 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 as it deems necessary, the Office should issue an appropriate decision.

### CONCLUSION

The Board finds that the case is not in posture for decision regarding the issue of whether appellant received an overpayment in the amount of \$1,312.13. Given the disposition regarding the fact and amount of the overpayment, the Board finds that it is premature to consider the issues regarding fault and waiver of the overpayment.

---

<sup>2</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>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>4</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

<sup>5</sup> See 20 C.F.R. § 10.126.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 14, 2006 is set aside and this case is remanded for further consideration pursuant to this decision.

Issued: June 11, 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