

FACTUAL HISTORY

On August 2, 2000 appellant, then a 63-year-old supply technician, filed a claim alleging that he sustained a right leg injury in the performance of duty:

“I work as a Supply Technician in Bldg. 125. My job requires me to do a considerable amount of walking each shift. I have to kneel and crawl locating parts, as well as pulling and pushing trailers loaded with aircraft component parts. My pain worsened in 1998 which caused me to seek medical treatment.”

The Office accepted appellant’s claim for a torn right meniscus. The Office later authorized a total right knee arthroplasty.

On October 20, 2005 appellant filed a Form CA-7 claim for wage loss beginning October 24, 2005. The form asked: “Have you applied for or received payment under any Federal Retirement or Disability law?” If he had, appellant was to supply the claim number, the date his annuity began, the amount of the monthly payment and the identity of the federal program or agency providing benefits, including the Social Security Administration (SSA). Appellant answered “no.” He signed his name to certify that the information provided was true and accurate to the best of his knowledge and belief.

On December 15, 2005 the Office notified appellant that he would receive compensation for temporary total disability on the periodic rolls beginning October 24, 2005. The Office informed him of his obligation to report certain information:

“You must also report any retirement income, disability income, or compensation benefits from any [f]ederal agency. This is because a recipient of compensation benefits under the Federal Employees’ Compensation Act is not permitted to receive benefits under certain other [f]ederal programs, including the Civil Service Retirement [System] [CSRS] program.”

On an April 4, 2006 Form EN1032, the Office asked appellant for specific information: “Report any benefits received from the SSA which you receive as part of an annuity under the Federal Employee’ Retirement System (FERS). DO NOT report any benefits received from the SSA on account of employment in the private sector.” The Office informed appellant that such information would be used to decide whether he was entitled to continue receiving compensation benefits or whether his compensation benefits should be adjusted. On April 15, 2006 appellant completed the Form EN1032 and answered “no” to the following: “Do you receive benefits from the SSA as part of an annuity for [f]ederal service?”

The Office later discovered that appellant had been receiving SSA benefits since April 2002.¹ The Office advised appellant that he received dual benefits and explained that it had to offset his compensation benefits to account for the SSA benefits he earned as a federal employee.

¹ An April 23, 2000 Notice of Personnel Action showed appellant’s retirement plan to be “FICA and CSRS (partial).”

After the SSA provided information on the applicable offset amounts, the Office made a preliminary determination that it had overpaid appellant \$13,824.61 from October 24, 2005 through December 23, 2006 because it did not offset his compensation for SSA benefits. The Office also found that appellant was at fault in creating the overpayment because he provided no information concerning his SSA benefits despite specific instructions to do so. The Office gave appellant 30 days to complete and submit an overpayment recovery questionnaire “so that we may determine a fair repayment method.”

In a decision dated April 16, 2007, the Office finalized its findings on the overpayment. The Office noted that appellant did not directly respond to the preliminary determination. As appellant was at fault in creating the overpayment, the Office denied waiver. Considering the fact that he was currently receiving compensation on the periodic rolls with net earnings of \$1,050.70 every 28 days, and was currently in receipt of SSA benefits each month, the Office determined that it should recover the debt by withholding \$250.00 from each of appellant’s compensation checks beginning May 12, 2007.

On appeal, appellant disagrees with the Office’s decision to deduct money that he feels he does not owe.

LEGAL PRECEDENT -- ISSUE 1

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.² It places limitations on the right to receive this compensation: “While an employee is receiving compensation under this subchapter ... he may not receive salary, pay, or remuneration of any type from the United States....”³

A beneficiary may receive compensation under the Act for disability of an employee concurrently with benefits under Title II of the SSA on account of age or death of such employee; however, the Office is required to reduce the amount of any such compensation by the amount of any SSA benefits that are attributable to the federal service of the employee.⁴ To determine the employee’s entitlement to compensation, the Office may require an employee to submit an affidavit or statement as to the receipt of any federally funded or federally assisted benefits.⁵

ANALYSIS -- ISSUE 1

The SSA benefit attributable to appellant’s federal service is “remuneration of any type from the United States” and is therefore a prohibited dual benefit. Appellant may not receive this SSA benefit and workers’ compensation for disability at the same time. But from October 24, 2005 through December 23, 2006, he did. Appellant had been receiving SSA

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116(a).

⁴ 20 C.F.R. § 10.421(d) (1999).

⁵ *Id.* at § 10.421(e).

benefits since April 2002 and the Office made no offset for these benefits when it placed him on the periodic compensation rolls beginning October 24, 2005. Using the offset figures supplied by the SSA, the Office correctly found that it had overpaid appellant \$13,824.61 in compensation for the period in question. The Board will affirm the Office's April 16, 2007 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

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).⁶

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.⁷

ANALYSIS -- ISSUE 2

Appellant was at fault in creating the overpayment because he failed to provide information which he knew or should have known was material. He never informed the Office that he was in receipt of SSA benefits. Appellant knew or should have known that this information was material because the Office inquired on several occasions whether he was in receipt of benefits from other federal programs. On December 15, 2005 when the Office notified him that he would be receiving compensation for wage loss on the periodic rolls, the Office explained why he had to report any retirement income, disability income or compensation benefits from any federal agency: "This is because a recipient of compensation benefits under the Act is not permitted to receive benefits under certain other federal programs, including the [CSRS] program." Although he was in receipt of SSA benefits since April 2002, appellant consistently failed to report these benefits to the Office. As a result, he received dual benefits from October 24, 2005 through December 23, 2006.

Because appellant failed to provide information which he knew or should have known was material, the Board will affirm the Office's April 16, 2007 decision on the issue of fault. Because appellant was at fault in creating the overpayment, the Office may not consider waiving the overpayment.

⁶ *Id.* at § 10.433(a).

⁷ *Id.* at § 10.433(b).

LEGAL PRECEDENT -- ISSUE 3

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information will be used to determine the repayment schedule, if necessary.⁸

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 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.⁹

ANALYSIS -- ISSUE 3

Appellant did not complete and submit the overpayment recovery questionnaire the Office provided with its preliminary determination. The Office, nonetheless, gave due regard to the probable extent and rate of his future compensation payments and his receipt of SSA benefits, and determined that it would recover the overpayment by deducting \$250.00 from continuing compensation. As the Office gave due regard to appellant's known financial circumstances, the Board finds that the Office did not abuse its discretion in setting the rate of recovery. The Board will affirm the Office's April 16, 2007 decision on this issue.

CONCLUSION

The Board finds that appellant received a \$13,824.61 overpayment of compensation from October 24, 2005 through December 23, 2006. The Board finds that he was at fault in creating this overpayment and is therefore not eligible for waiver. The Board also finds that the Office properly set the rate of recovery at \$250.00 from continuing compensation payments.

⁸ *Id.* at § 10.438.

⁹ *Id.* at § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2007
Washington, DC

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

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

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