

jumped off a truck that had started moving forward. His claim was accepted for sprain/strain of the left shoulder/arm and sprain/strain of the lumbar region. Appropriate compensation and medical benefits were paid.

In a report of termination of disability and/or payment form submitted on May 22, 2006, the employing establishment noted that appellant had returned to full duty on April 4, 2006.

On January 24, 2007 the Office issued a preliminary determination that appellant received an overpayment in the amount of \$2,495.96 because he continued to receive compensation payments for the period April 4 through May 13, 2006 although he had returned to work. Appellant filed no timely response.

By decision dated April 11, 2007, the Office finalized its decision that an overpayment in the amount of \$2,495.96 was created. It further found that appellant was at fault in the creation of the overpayment and that he was therefore not entitled to waiver.

LEGAL PRECEDENT

Section 8116(a) of the Federal Employees' Compensation Act provides that, while an employee is receiving compensation under the Act, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.¹

ANALYSIS

The Office determined that an overpayment of \$2,495.96 was created because appellant returned to work and received wages 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 relevant period and in what amount. The Office's statements and calculations are not enough; proof of payment must be in the record. Otherwise, the Board does not have sufficient evidence to review whether the Office properly determined the amount of the overpayment. There is no evidence such as a computer printout establishing the payment of compensation for the period from April 4 to May 13, 2006.² Therefore, the Office has failed to establish that an overpayment occurred in this case.³

¹ 5 U.S.C. § 8116(a); see *Danny E. Haley*, 56 ECAB __ (Docket No. 04-853, issued March 18, 2005) (Office procedures provide that an overpayment of compensation is created when a claimant returns to work but continues to receive wage-loss compensation).

² See *J.C.*, Docket No. 06-1229 (issued September 14, 2006) (the Board found that the Office failed to establish an overpayment when there was no evidence with respect to individual payments issued during the relevant time period); *Salvator A. Schembari*, Docket No. 05-1309 (issued December 6, 2005) (the Board found that the Office failed to establish that an overpayment existed as the record was devoid of any evidence that specific payments were made, the date issued and the period covered by the specific payments); *William P. Tippets*, Docket No. 03-1755 (issued July 29, 2004) (the Board found that the Office failed to establish an overpayment existed as the record contained no evidence of the specific amount he was entitled to receive at the correct rate).

³ In light of the resolution of the first issue, the remaining issue is moot.

CONCLUSION

The Board finds that the Office failed to establish that an overpayment in the amount of \$2,495.96 has been created.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2007 is reversed.

Issued: October 23, 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