

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

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**E.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mission, TX, Employer**

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**Docket No. 07-1281  
Issued: September 17, 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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 9, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 23, 2007 finding that she had received an overpayment of compensation in the amount of \$736.06. 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 in the amount of \$736.06; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment and, therefore, was not entitled to waiver.

**FACTUAL HISTORY**

On October 3, 2006 appellant, then a 36-year-old clerk, sustained injury to her back while lifting a heavy box in the performance of duty. The Office accepted appellant's claim for lumbar sprain on December 20, 1996. The Office entered appellant on the periodic rolls on January 4, 2007 and issued an initial payment for the period November 18 to December 23, 2006 in the

amount of \$3,312.26. The Office indicated that appellant was entitled to receive a regular payment for the period December 24, 2006 to January 20, 2007 in the amount of \$2,719.80.<sup>1</sup>

Appellant returned to full-time light-duty work on January 13, 2007. In a letter dated January 25, 2007, the Office informed appellant that it had made a preliminary determination that she had received an overpayment of compensation in the amount of \$736.06 as she was paid compensation for total disability through January 20, 2007 and she returned to work on January 13, 2007. The Office stated that appellant was at fault in the creation of the overpayment and allowed her 30 days to respond. Appellant did not respond. On March 23, 2007 the Office finalized the overpayment decision and concluded that appellant had received an overpayment of compensation in the amount of \$736.06 for the period January 13 to 20, 2007 and that as she was at fault in the creation of the overpayment the overpayment was not subject to waiver.<sup>2</sup>

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

Section 8116 of the Federal Employees' Compensation Act defines the limitations on the right to receive compensation benefits. This section of the Act provides that, while an employee is receiving compensation, he or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>3</sup> Section 10.500 provides that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>4</sup>

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

Appellant returned to full-time light-duty work on January 13, 2007. She is not entitled to receive compensation benefits for total disability from this date under the Act. The Office alleged that appellant received compensation benefits for the period December 24, 2006 to January 20, 2007 in the amount of \$2,719.80 and that she was not entitled to any compensation benefits on or after January 13, 2007. However, the record does not contain any evidence that appellant actually received payment from the Office for the period December 24, 2006 to January 20, 2007.<sup>5</sup> Without evidence in the record that the Office actually made the

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<sup>1</sup> The record does not contain a record of this payment. The only payment after December 23, 2006 is issued on March 8, 2007 for the period January 18 to February 9, 2007 for intermittent dates of disability.

<sup>2</sup> On appeal appellant has alleged that she did not receive any payment for the period December 24, 2006 to January 20, 2007.

<sup>3</sup> 5 U.S.C. § 8116.

<sup>4</sup> 20 C.F.R. § 10.500.

<sup>5</sup> The record does indicate that appellant received a check in the amount of \$3,312.26 for the period November 18 to December 23, 2006. There is no documentation of payment from the Office on January 20, 2007.

compensation payment which allegedly resulted in the overpayment, the Office has not met its burden of proof in establishing that an overpayment occurred.<sup>6</sup>

**CONCLUSION**

The Board finds that there is not sufficient evidence in the record to establish that an overpayment of compensation occurred as alleged.<sup>7</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2007 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 17, 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

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<sup>6</sup> Compare *Claude T. Green*, 42 ECAB 274 (1990) (finding that fault could not be established as there was no evidence that appellant could have ascertained by the checks received the compensation period covered); *Shirley A. Ashford*, Docket No. 03-1909 (issued April 9, 2004).

<sup>7</sup> Due to the Board's finding regarding the fact of overpayment, it is not necessary to address whether appellant was at fault in the creation of the overpayment.