

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

C.B., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Monroe, PA, Employer

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**Docket No. 08-133
Issued: April 18, 2008**

Appearances:

*Charles L. Kincade, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 16, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 31, 2007 merit decision concerning an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received a \$16,161.00 overpayment of compensation; (2) whether the Office properly determined that he was at fault in creating the overpayment of compensation, thereby precluding waiver of recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$750.00 from his compensation payments every month.

FACTUAL HISTORY

In late 2005 the Office accepted that appellant, then a 55-year-old letter carrier, sustained an aggravation of a right bunion. The Office paid compensation for periods of disability. In a

July 14, 2006 decision, the Office granted appellant a schedule award for a three percent permanent impairment of his right foot. The schedule award ran for 6.15 weeks from May 4 to June 16, 2006. The award noted that appellant's gross weekly pay rate was \$673.40 (\$897.87 multiplied by the rate for claimants with dependents) and the total of the award was \$2,693.61. The record contains a worksheet indicating that appellant was entitled to a \$2,693.61 payment, but the record does not show when and how the payment was actually made. Appellant called the Office on July 24, 2006 and confirmed that the amount of the schedule award was \$2,693.61.

In a December 20, 2006 notice, the Office advised appellant of its preliminary determination that he received a \$16,161.00 overpayment of compensation due to receiving payments after the payment period for the July 14, 2006 schedule award had ceased. The Office indicated that the schedule award ran from May 4 to June 16, 2006 and compensated appellant in the amount of \$2,693.61. It found that appellant received six additional payments (each in the amount of \$2,693.61) which covered the period July 9 to December 23, 2006.¹ The record contains worksheets which describe these payments, but there are no documents in the record showing when and how the payments were actually made. The Office made a preliminary determination that appellant was at fault in the creation of the overpayment. The Office requested that appellant submit evidence or argument if he wished to contest any aspect of the overpayment, including the fault determination, and requested that he submit certain financial information.²

In a February 8, 2007 decision, an Office hearing representative affirmed the Office's July 14, 2006 schedule award.

Appellant requested a hearing before an Office hearing representative in connection with preliminary notice of overpayment. At the May 7, 2007 hearing, he indicated that he had contested the amount of the schedule award he had received and asserted that he had no reason to believe that the payments he received between mid and late 2006 were incorrect.

In a July 31, 2006 decision, the Office hearing representative made a final determination that appellant received a \$16,161.00 overpayment of compensation due to receiving payments after the payment period for the July 14, 2006 schedule award had ended. She also made a final determination that appellant was at fault in the creation of the overpayment. The Office hearing representative indicated that the financial information submitted by appellant showed that his monthly income exceeded his monthly expenses by \$1,543.00 and determined that the overpayment should be recovered by deducting \$750.00 from appellant's compensation payments every month.

¹ The Office indicated that the payments were made at 28-day intervals but did not list the dates of the payments. The Board notes that multiplying \$2,693.61 times six actually equals \$16,161.66 rather than \$16,161.00.

² Appellant later contested the fault finding and submitted financial information.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act³ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁴ Section 8129(a) of the Act provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁵

Section 8116(a) of the Act provides that, while an employee is receiving compensation or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.⁶

In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.⁷ 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.”⁸ These requirements are supported by Board precedent.⁹

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an aggravation of a right bunion. In a July 14, 2006 decision, the Office granted appellant a schedule award for a three percent permanent impairment of his right foot. The schedule award ran for 6.15 weeks from May 4 to June 16, 2006. The award noted that appellant's gross weekly pay rate was \$673.40 (\$897.87 multiplied by the rate for claimants with dependents) and the total of the award was \$2,693.61. The Office subsequently found that appellant received a \$16,161.00 overpayment of

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8102(a).

⁵ 5 U.S.C. § 8129(a).

⁶ 5 U.S.C. § 8116(a).

⁷ 5 U.S.C. § 8124(a) provides: “The [Office] shall determine and make a finding of facts 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.”

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁹ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

compensation due to receiving six duplicative schedule award payments after the payment period for the July 14, 2006 schedule award had ended.

The Board finds that the Office has not provided sufficient explanation of how it calculated the fact or amount of the overpayment. The case will be remanded to the Office for further development. Although the record contains a worksheet indicating that appellant was entitled to a \$2,693.61 payment in connection with the July 14, 2006 schedule award, there are no documents in the record showing when and how the payment was actually made. Moreover, although the record contains worksheets indicating that appellant received \$16,161.00 for the period July 9 to December 23, 2006, the record does not contain documents showing when and how the payments were actually made. The Office asserted that appellant received six unwarranted payments (each in the amount of \$2,693.61) but it did not indicate when the individual payments were made (other than indicating they were made every 28 days) and the documents of record do not provide any further clarification.

In the absence of these records, the Board is unable to determine whether the Office accurately calculated the amount of the alleged overpayment. The Board is unable to determine whether appellant actually received the compensation to which he is entitled or whether and in what amounts he received compensation to which he is not entitled.¹⁰ For example, it remains unclear whether the \$16,161.00 appellant is alleged to have received actually contained any monies to which he was entitled to in connection with the July 14, 2006 schedule award. Obtaining information about the timing and amounts of the monies appellant might have received would also be helpful in determining whether he would be at fault in the creation of any overpayment.

At present, appellant would not be able to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.¹¹ Given the Office's failure to adequately explain its findings regarding the fact and amount of the alleged overpayment, it is premature to consider the issues of fault, waiver of recovery and method of recovery. The case should be remanded to the Office so that it might provide sufficient explanation of the above-described matters. After such development as it deems necessary, the Office should issue an appropriate decision regarding all relevant overpayment issues.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received a \$16,161.00 overpayment of compensation, whether he is at fault in the creation of the overpayment such that he would not be entitled to waiver of recovery, and whether the overpayment should be recovered by deducting \$750.00 from his compensation payments every month. The case is remanded to the Office for further development.

¹⁰ The Board notes that there appears to be an error in the Office's determination that the July 14, 2006 schedule award entitles appellant to only \$2,693.61. Multiplying appellant's gross weekly pay rate of \$673.40 times the 6.15 weeks that the award ran would yield \$4,141.41 rather than \$2,693.61.

¹¹ See *supra* note 8 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 31, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 18, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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