

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Leandro, CA, Employer**

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**Docket No. 08-201
Issued: April 21, 2008**

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 October 22, 2007 appellant filed a timely appeal from an August 20, 2007 decision of the Office of Workers' Compensation Programs finding an overpayment of \$7,183.80 for which she was at fault. 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 an overpayment was created in the amount of \$7,183.80 for the period April 10 to July 7, 2007; and (2) whether the Office properly determined that appellant was at fault in the creation of the overpayment, thus precluding waiver of recovery.

FACTUAL HISTORY

On September 26, 2006 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that her carpal tunnel syndrome was employment related. The Office accepted the claim for bilateral carpal tunnel syndrome. Appellant had carpal tunnel surgery on

January 8, 2006.¹ She stopped work on January 8, 2006 and returned to modified work on April 10, 2007. Appellant filed claims for compensation (Form CA-7) for the period January 8 to April 7, 2007, which the Office accepted and paid through April 1, 2007.

On January 16, 2007 the Office made a preliminary determination that appellant was overpaid in the amount of \$7,183.80 for the period April 10 to July 7, 2007. The Office found that she was at fault in the creation of the overpayment as she accepted a payment which she knew or should have known to be incorrect. The Office noted that appellant returned to full-time modified work on April 10, 2007. The Office found that she was overpaid for the period April 10 to July 7, 2007 in the amount of \$7,183.80. The Office found that appellant was at fault as she had accepted a payment she knew or should have known she was not entitled to. She did not respond.

By decision dated August 20, 2007, the Office finalized the overpayment determination in the amount of \$7,183.80 and that she was with fault in the creation of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act² provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. Section 8106(a) of the Act provides in pertinent part as follows:

“If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between [her] monthly pay and [her] monthly wage-earning capacity after the beginning of the partial disability, which is known as [her] basic compensation for partial disability.”³

The Act further provides that an employee who is receiving compensation for an employment injury may not receive wages for the same time period.⁴ Section 8129(a) of the Act provides that when an overpayment has been made to an employee because of an error of fact or law, adjustment shall be made by decreasing later payments to which she is entitled.⁵

¹ In a February 6, 2007 memorandum to the file, a claims examiner stated that appellant would be placed on the periodic rolls for temporary total compensation. However, the record does not contain a letter to appellant informing her of this decision.

² 5 U.S.C. §§ 8101-8193, 8102(a).

³ 5 U.S.C. § 8106(a).

⁴ 5 U.S.C. § 8116(a).

⁵ 5 U.S.C. § 8129(a).

In determining whether a claimant is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.⁶ 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.⁷ These requirements are supported by Board precedent.⁸

ANALYSIS -- ISSUE 1

In its August 20, 2007 decision, the Office determined that appellant received a \$7,183.80 overpayment of compensation for the period April 10 to July 7, 2007 because she received wage-loss compensation after she had returned to modified work. The Board finds that the Office has not adequately explained its basis for reaching this determination. The record contains no worksheets or any other evidence suggesting that appellant received \$7,183.80 in compensation for the period April 10 to July 7, 2007 that she was not entitled to receive. Furthermore, there is no indication in the record that payments were made on any given date. There is no evidence that the Office placed appellant on the periodic rolls for temporary total disability or that she received payments for wage-loss compensation. There are no records as to whether a payment was made through issuance of a paper check or through direct deposit into appellant's bank account. The record shows she did not submit a claim for compensation requesting compensation for the period April 10 to July 7, 2007. The evidence of record does not establish that she received \$7,183.80 in compensation for the period April 10 to July 7, 2007 that she was not entitled to receive. For this reason, fact of overpayment is not established.

As noted above, the Office is required by statute and regulation to make findings of fact.⁹ The Office's August 20, 2007 decision does not contain findings which would allow appellant to understand the precise defect of her claim or the evidence which would tend to overcome it. Therefore, the case will be remanded to the Office. 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 whether the Office properly determined that appellant received a \$7,183.80 overpayment and whether the Office properly found that she was at fault in the creation of the overpayment such that it was not subject to waiver. The case is remanded to the Office for further development to be followed by the issuance of an appropriate decision.

⁶ 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.

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997). See also *Paul M. Colosi*, 56 ECAB 294 (2005).

⁸ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

⁹ See *supra* notes 6 and 7 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 20, 2007 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 21, 2008
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