

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

C.O., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
North Reading, MA, Employer)

**Docket No. 08-1092
Issued: December 23, 2008**

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 March 4, 2008 appellant filed a timely appeal from a February 6, 2008 merit decision of the Office of Workers' Compensation Programs finding that she received an overpayment of compensation, for which she was at fault, and that she was not entitled to waiver. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment decision.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$10,967.24 from April 7, 1998 to April 14, 2007; (2) whether the Office properly determined that she was at fault in accepting the overpayment and was therefore not entitled to waiver; and (3) whether the Office properly determined that it would recover the overpayment by deducting \$74.00 from her continuing compensation payments every four weeks.

FACTUAL HISTORY

On November 16, 1994 appellant, then a 41-year-old mail processor, filed a traumatic injury claim alleging that on November 14, 1994 she injured her back while lifting material.

The Office accepted the claim for lumbosacral strain and authorized lumbar fusion surgery, which was performed on April 1, 1996.¹ By letter dated September 23, 1997, the Office placed appellant on the periodic rolls for temporary total disability at the augmented 3/4 or 75 percent rate. Appellant returned to work for four hours per day effective April 12, 1999 and was placed on the periodic rolls for partial disability effective April 25, 1999. The record indicates she has a son who was born on April 7, 1980.

Appellant submitted several Office EN1032 forms dating from March 17, 1999 to 2003. These forms explained the circumstances under which she would be entitled to augmented compensation for her dependent children.² Appellant noted on the March 17, 1999 form that her son ceased being a dependent on January 1, 1999 as he was no longer a full-time student. However, she noted that he would be returning to full-time student status on September 1, 1999. In subsequent EN1032 forms dated August 23, 1999, March 22, 2001, March 15, 2003, March 17, 2004, March 23, 2005, April 19, 2006, March 15, 2007 and March 24, 2008 appellant did not claim her son as a dependent.

In a letter received by the Office on September 24, 1999, appellant stated that her son was enrolled full-time at Northern Essex Community College beginning September 8, 1999. In forms verifying her son's student status dated September 30 and October 4, 1999, she noted that he was enrolled at Northern Essex Community College, was not a full-time student and started September 8, 1999. Appellant noted that her son was taking nine credits as a 3/4 student.

On September 28, 1999 the Office issued a loss of wage-earning capacity which found that appellant's part-time permanent assignment clerical job working 20 hours per week represented wage-earning capacity. It informed her that she would be paid by the Office for the difference in her pay and that compensation was calculated at the augmented rate of three quarters. The Office further informed appellant that her compensation every four weeks would be \$683.00.

On August 28, 2000 the Office received an undated letter from appellant stating that her son was no longer a full-time student.

On a June 25, 2001 enrollment verification, Northern Essex Community College verified that appellant was a student at the school. The school stated that she had been enrolled as a half-time student for September to December 1998 and November 12 to December 1999 and three-quarters time for September 11 to November 11, 1999.

The record contains computer payment forms for the period January 3, 1995 through March 17, 2007.

¹ On December 28, 1995 the Office issued a loss of wage-earning capacity decision which found that her actual earnings as a modified clerk represented her wage-earning capacity.

² The Form EN1032 explains that compensation for a dependent may be claimed for an unmarried child, including an adopted child or stepchild, who lives with the claimant and is under 18 years of age, an unmarried child who is 18 or over but who cannot support him or herself because of mental or physical disability or an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level. See 5 U.S.C. § 8101(17); 20 C.F.R. § 10.405.

On June 25, 2007 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$10,967.24 for the period June 7, 1998 through April 14, 2007 because she was paid disability compensation at the augmented three-quarters rate after her son turned 18 on April 7, 1998. It found her to be at fault in the creation of the overpayment because she accepted payments which she knew or should have known were incorrect. The Office indicated that during the period April 7, 1999 through April 14, 2007 appellant received compensation at the three-quarters rate totaling \$99,331.46 and that compensation at the two-thirds' rate would total \$88,364.22, resulting in an overpayment in compensation of \$10,967.24.

On July 10, 2007 appellant initially requested a decision based on the written evidence and submitted a completed overpayment questionnaire. A telephone conference was held on August 15, 2007.

On February 6, 2008 the Office finalized the determination that appellant was at fault in the creation of an overpayment in compensation in the amount of \$10,967.24 because she knew or should have known she was not entitled to receive wage-loss compensation at the augmented three-quarters rate after her son turned 18 on April 7, 1998. It stated that it would deduct \$74.00 from her continuing monthly compensation payments to recover the overpayment.

LEGAL PRECEDENT -- ISSUE 1

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 duty.⁴ If the disability is total, the United States shall pay the employee during the disability monthly compensation equal to 66 2/3 percent of her monthly pay, which is known as her basic compensation for total disability.⁵ Where the employee has one or more dependents as defined in the Act, he or she is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent, for a total of 75 percent of monthly pay.⁶ A dependent includes a student, which under 5 U.S.C. § 8101 means an individual under 23 years of age who has not completed four years of education beyond high school and is pursuing a full-time course of study.⁷ If a claimant receives augmented compensation during a period where he or she has no eligible dependents, the difference between the compensation he or she was entitled to receive at the two-thirds' compensation rate and the augmented compensation received at the three-quarters rate constitutes an overpayment of compensation.⁸

³ 5 U.S.C. § 8101-8193.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8105(a).

⁶ *Id.* at § 8110(b).

⁷ *Id.* at § 8110(a).

⁸ *Diana L. Booth*, 52 ECAB 370 (2001).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation. The record supports that she was paid wage-loss compensation at the augmented three-quarters rate after her son turned 18 on April 7, 1998, was no longer a full-time student and that she had no other qualifying dependents. Appellant indicated on her March 17, 1999 EN1032 form that her son ceased being a full-time student effective January 1, 1999. She was entitled to receive compensation at the augmented three-quarters rate while her son was a full-time student and under the age of 23.⁹ The record shows that appellant was paid at the augmented three-quarters rate for the period April 7, 1998 through April 14, 2007. However, she was not entitled to receive compensation at the augmented three-quarters rate once her son turned 18 and was no longer a full-time student. The record contains evidence that appellant's son went to Northern Essex Community College half-time from September to December 1998 and November 12 to December 1999 and three-quarters time from September to November 11, 1999. The Board finds that appellant was not entitled to compensation at the augmented three-quarters rate after her son ceased being a full-time student after he had turned 18. Appellant was only entitled to receive compensation at the two-thirds rate. An overpayment in compensation was created once her son ceased being a full-time student after turning 18.¹⁰

The Board finds, however, that this case is not in posture for decision regarding the amount of the overpayment. While the record contains evidence that appellant's son turned 18 on April 7, 1998, it does not contain any evidence as to when appellant's son graduated from high school. Appellant would be entitled to compensation at the augmented rate of three-quarters while her son was still in high school or a full-time student even though he had turned 18. As the record is devoid of any evidence showing when her son graduated from high school or ceased being a full-time student other than the letter from Northern Essex Community College indicating that her son was a part-time student for the period September to December 1998 and September to December 1999, the Board is unable to make an informed decision on this question. The case will therefore be remanded to determine the date appellant's son was no longer a full-time student and her entitlement to the augmented rate of three-quarters ceased.¹¹

CONCLUSION

The Board finds that fact of overpayment has been established. However, the case is not in posture for a determination as to the period of the overpayment or the amount.

⁹ 5 U.S.C. § 8110(a)(2), 20 C.F.R. § 10.405.

¹⁰ *Id.*

¹¹ Based on the Board's determination in the first issue in this case regarding the period and amount of the overpayment, issues two and three need not be addressed at this time.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 6, 2008 is affirmed in part, set aside in part and the case remanded for further proceedings consistent with the above opinion.

Issued: December 23, 2008
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