

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

N.E., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Castle, PA, Employer)

**Docket No. 07-2054
Issued: January 22, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2007 appellant filed a timely appeal from the July 6, 2007 merit decision of the Office of Workers' Compensation Programs, which found an overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her case.

ISSUE

The issue is whether the Office properly denied waiver of a \$1,180.17 overpayment.

FACTUAL HISTORY

On February 6, 2006 appellant, then a 56-year-old clerk, sustained an injury in the performance of duty, which she attributed to heavy lifting and stretching. She felt a sharp, stabbing pain in her left low back. The Office accepted appellant's claim for lumbar sprain. Appellant returned to work for four hours a day and received compensation for partial disability.

The Office mistakenly paid appellant compensation for total disability from March 6 to 30, 2007. On May 17, 2007 the Office made a preliminary determination that appellant received an overpayment of \$1,180.17 because she received compensation for total disability but was

entitled to compensation for only four hours per day. The Office found that she was without fault in creating this overpayment. The Office asked appellant to submit a check for the full amount if she agreed she was overpaid this amount but, if she was currently unable to pay the full amount, the Office asked her to complete and submit an enclosed overpayment recovery questionnaire so that it could determine a fair repayment method. The Office informed appellant:

“In order for [the Office] to consider the question of waiver or to determine a reasonable method for collection, you must complete and submit the enclosed Form OWCP-20. Attach supporting documents to Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support the income and expenses listed. Under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days will result in the denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.”

In a decision dated July 6, 2007, the Office finalized its preliminary determination. The Office noted that it had received no response from appellant since the preliminary determination: “Therefore, there is no information in the file to establish whether recovery of the debt would defeat the purpose of the [Federal Employees’ Compensation Act] or be against equity and good conscience.” The Office instructed appellant to forward a check in the amount of \$1,180.17.

Appellant appeals her having to pay back the \$1,180.17 overpayment. She stated that when she read that she was not at fault, she assumed that she did not have to fill out any of the forms. Appellant asks the Board to reconsider “and find it was not my fault.”

LEGAL PRECEDENT

The Act places limitations on the right to receive compensation. While an employee is receiving compensation, she may not receive salary, pay or remuneration of any type from the United States, with certain exceptions.¹ It is therefore well established that an employee is not entitled to compensation for temporary total disability after returning to work.² “Temporary total disability” is defined as the inability to return to the position held at the time of injury or earn equivalent wages or perform other gainful employment.³

When an overpayment has been made to an individual because of an error of fact or law, the Office may consider waiving the overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁴ If the Office finds that the recipient

¹ 5 U.S.C. § 8116(a).

² *E.g., Tammi L. Wright*, 51 ECAB 463, 465 (2000) (where the record established that the employee returned to work at the employing establishment for four hours a day from August 7, 1996 to January 8, 1997 but received compensation for total disability for that same period, the Board found that the employee received an overpayment of compensation).

³ 20 C.F.R. § 10.400(b) (1999).

⁴ *Id.* at § 10.433(a).

of an overpayment was not at fault, repayment will still be required unless adjustment of benefits or recovery of the overpayment would (1) defeat the purpose of the Act or (2) be against equity and good conscience.⁵

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.⁶

Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.⁷

ANALYSIS

Appellant does not contest the fact or amount of the overpayment. The record shows that from March 6 to 30, 2007 the Office paid her compensation for total disability, or for eight hours of wage loss per day, when in fact she was entitled to compensation for partial disability, or for four hours of wage loss per day. The Office paid her \$2,373.43 for this period when she was entitled to only \$1,193.26. An overpayment of \$1,180.17 was thus created.

Appellant asks the Board to find that she was not at fault. The Office has already made that finding. She was not at fault but the fact that appellant was not at fault in creating this overpayment does not mean she automatically gets to keep money the government mistakenly paid to her. That money does not belong to her, and by law, the Office must recover the overpayment unless recovery would defeat the purpose of the Act or be against equity and good conscience. The overpayment recovery questionnaire that the Office enclosed in its preliminary determination, and that the Office asked appellant to complete and submit, is designed to obtain the information necessary to determine whether appellant is entitled to waiver of the overpayment on one of these two grounds. Because appellant did not complete and submit this form, the Office had no choice but to deny waiver. Regulations are clear: Failure to submit the requested information within 30 days of the request “shall result in denial of waiver” and the Office may not consider any further request for waiver until appellant completes and submits the overpayment recovery questionnaire and attaches the supporting financial documentation. The Board will affirm the Office’s July 6, 2007 decision.

CONCLUSION

The Board finds that the Office properly denied waiver of a \$1,180.17 overpayment.

⁵ *Id.* at § 10.434.

⁶ *Id.* at § 10.438(a).

⁷ *Id.* at § 10.438(b).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2008
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