

appellant received a schedule award for 20 percent impairment of each upper extremity. The award totaled 124.8 weeks compensation covering the period May 2, 2002 through September 21, 2004.

By letter dated September 7, 2002, appellant requested that the Office disburse the balance of his schedule award in a lump-sum payment.² The Office responded on September 26, 2002 advising him that the lump-sum payment would be \$58,652.39, based on a commutation date of November 3, 2002.

On October 8, 2002 appellant signed a formal agreement accepting a lump-sum payment of \$58,652.39, for the remaining schedule award period of November 3, 2002 to September 21, 2004. In paragraph two of the agreement, he acknowledged that the lump-sum payment represented full and final settlement of the schedule award for the above-designated period and that “no further monetary compensation benefits [would] be extended ... for the duration of the schedule award.” A check in the amount of \$58,652.39 was disbursed on November 15, 1992.

Appellant wrote the Office on June 24, 2003 advising that he was currently receiving additional monthly benefits of \$2,500.00 under case number 13-1212733. He also noted that he had written the Office in January and May 2003 regarding the payments but not did receive an answer. Appellant wanted to know how long he would continue to receive the additional benefits.

On August 30, 2005 the Office advised appellant of its preliminary determination that he received an overpayment of benefits in the amount of \$61,528.74. The Office explained that appellant received a lump-sum payment on his August 28, 2002 schedule award as well as regular monthly payments for the same schedule award. The Office also informed appellant that he was considered to be at fault in accepting the overpayment.

On September 20, 2005 appellant responded to the Office’s preliminary finding. He did not question the amount of the overpayment, but took issue with the Office’s finding of fault. Appellant indicated that he had waited several months before cashing the checks. In the interim, he explained that he had written the Office on three occasions in 2003 regarding the additional payments, but the Office did not respond. Absent an explanation, appellant assumed the Office had previously erred in calculating the percentage of his permanent impairment and the checks he received represented additional compensation owed. He submitted an overpayment recovery questionnaire, various financial records and copies of several benefit statements regarding the schedule award payments he received.

Appellant also submitted a copy of a May 23, 2003 letter to the Office inquiring about the monthly payments of \$2,500.00. He explained that he had received a lump-sum payment in November 2002 and since then he had also been receiving monthly payments. Appellant indicated that he had not received any correspondence from the Office explaining the payments, and he wanted to know how much longer he would continue to receive the additional payments.

² The Office disbursed payments on August 23 and September 7, 2002, totaling \$11,249.35, for the period May 2 to September 7, 2002.

On July 12, 2007 the Office issued a final decision finding that appellant was overpaid \$61,528.74 and was at fault in accepting this overpayment.

LEGAL PRECEDENT -- ISSUE 1

A schedule award recipient may request that the Office disburse his award in a single, lump-sum payment in lieu of regular, recurring payments every 28 days.³ It is, therefore, axiomatic that once an employee elects and receives a lump-sum payment on his schedule award, the employee is no longer entitled to receive regular, recurring payments for the same schedule award period.

ANALYSIS -- ISSUE 1

Appellant does not challenge the fact of the overpayment or the amount. In his May and June 2003 letters to the Office, appellant acknowledged that he continued to receive monthly payments of approximately \$2,500.00, after the Office's November 2002 lump-sum payment of \$58,652.39. Appellant also submitted copies of benefit statements he received with the erroneous schedule award payments, beginning with a November 30, 2002 payment of \$2,441.72. This payment covered the period November 3 to 30, 2002, but just two weeks earlier the Office had paid appellant \$58,652.39, for the period beginning November 3, 2002 and extending through September 21, 2004. The latest benefit statement appellant provided was for a schedule award payment dated September 24, 2004. Thus, his own records substantiate the Office's finding that he received erroneous schedule award payments for approximately two years after accepting a lump-sum payment in full settlement of his August 28, 2002 schedule award. Accordingly, the Board affirms the Office's finding that appellant received an overpayment of benefits in the amount of \$61,528.74.

LEGAL PRECEDENT -- ISSUE 2

An overpayment must be recovered unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the [Federal Employees' Compensation] Act or would be against equity and good conscience."⁴ An individual who is found at fault in either accepting or creating an overpayment is not eligible for a waiver of recovery of overpayment.⁵ Benefits recipient will be found at fault if the individual accepted a payment which he knew or should have known to be incorrect.⁶ Each recipient is responsible for taking all reasonable measures to ensure that payments he receives from the Office are proper.⁷

³ 20 C.F.R. § 10.422(b) (2007).

⁴ 5 U.S.C. § 8129(b) (2000).

⁵ 20 C.F.R. § 10.433(a).

⁶ 20 C.F.R. § 10.433(a)(3).

⁷ 20 C.F.R. § 10.433(a).

ANALYSIS -- ISSUE 2

Appellant is at fault with respect to the \$61,528.74 overpayment because he accepted payments which he knew or should have known to be incorrect. The agreement he signed on October 8, 2002 clearly indicated that the lump-sum payment of \$58,652.39 for the period November 3, 2002 to September 21, 2004 represented “full and final settlement” of the August 28, 2002 schedule award. The agreement also stated that “no further monetary compensation benefits [would] be extended ... for the duration of the schedule award.” Despite the unambiguous language of the settlement agreement, appellant accepted additional schedule award payments for almost two years after receiving a lump-sum payment for the same schedule award.

The May and June 2003 letters appellant sent to the Office lend further support to the Office’s finding that he accepted payments which he knew or should have known to be incorrect. He suspected something was amiss when he continued to receive schedule award payments every four weeks beginning November 30, 2002. Appellant wrote the Office on at least two occasions regarding the questionable payments. Had the Office timely responded, the issue likely could have been resolved before the amount of the overpayment swelled to in excess of \$60,000.00. The fact that the Office did not immediately respond to appellant’s inquiries does not make the additional schedule award payments he received any less suspect.

While the Office may be in large part responsible for creating the overpayment, this does not excuse appellant from accepting payments he knew or should have known to be incorrect.⁸ The record establishes that appellant accepted schedule award payments he knew or should have known to be incorrect.⁹ Therefore, the Board finds that he was at fault with respect to the \$61,528.74 overpayment. Because appellant is at fault, he is not entitled to a waiver of recovery of the overpayment.

CONCLUSION

Appellant received an overpayment in the amount of \$61,528.74 and was at fault in accepting the overpayment.

⁸ *William McCarty*, 54 ECAB 525 (2003).

⁹ 20 C.F.R. § 10.433(a)(3).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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