

as well as bursae and tendinitis in the right shoulder. Appellant returned to work on November 6, 2006.

On April 24, 2007 appellant had right shoulder subacromial decompression rotator cuff repair. On April 23, 2007 she filed a claim for compensation from April 17 through July 15, 2007. In a May 14, 2007 letter, Dr. James A. Rosacker, an orthopedic surgeon, stated that appellant would be off work for at least eight weeks after her April 24, 2007 surgery. On July 11, 2007 appellant returned to work. On August 9, 2007 the Office paid appellant for the time period from July 4 through August 4, 2007.

On August 13, 2007 the Office made a preliminary determination that appellant received an overpayment of \$2,293.90 because she returned to work full time on July 11, 2007 but was paid for lost wages through August 4, 2007. The Office found that she was without fault in creating this overpayment. The Office included an OWCP-20 overpayment recovery questionnaire with its decision and informed appellant that she would need to submit it in order to determine her eligibility for a waiver. The Office created a worksheet to determine the amount of overpayment for the period.

On August 23, 2007 appellant contested the overpayment and requested waiver. Appellant argued that the Office was notified in sufficient time to prevent overpayment and that she did not receive the check until after the time period. No other information was submitted.

On September 27, 2007 the Office issued a decision finding that appellant was without fault in the creation of overpayment but not entitled to a waiver of recovery.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation 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

ANALYSIS -- ISSUE 1

Appellant does not contest the fact or amount of the overpayment. The Office paid compensation for total disability from July 4 through August 4, 2007 but appellant returned to work on July 11, 2007 and was thereby being paid by both the Office and her employer from that

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).

date through August 4, 2007 creating an overpayment. Appellant is not entitled to receive temporary total disability and actual earnings for the same period.⁴ An overpayment was created when appellant returned to work but continue to receive wage-loss compensation. The Office calculated her overpayment to be \$2,293.90 for the time period from July 11 through August 4, 2007. The Board finds that an overpayment was created in the amount of \$2,293.90.

LEGAL PRECEDENT -- ISSUE 2

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.⁵ If the Office finds that the recipient 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.⁶

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.⁷

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.⁸

ANALYSIS -- ISSUE 2

The Office found that appellant was not at fault in the creation of the overpayment. Although appellant was not at fault in creating the overpayment, she is still required to return the amount unless recovery would defeat the purpose of the Act or be against equity and good conscience. The purpose of the overpayment recovery questionnaire sent to appellant is to acquire the necessary information to determine whether appellant is entitled to a waiver of overpayment on one of the two grounds. As appellant did not complete and submit this form, the Office had no option but to deny the waiver. The regulations clearly state that failure to submit the requested information within 30 days of the request will result in denial of waiver and that no further request for a waiver will be considered until the requested information is submitted.⁹

⁴ See *Danny E. Haley*, 56 ECAB 393 (2005).

⁵ *Id.* at § 10.433(a).

⁶ *Id.* at § 10.434.

⁷ *Id.* at § 10.438(a).

⁸ *Id.* at § 10.438(b).

⁹ *Id.*

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$2,293.90 and that the Office properly denied waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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