



## **FACTUAL HISTORY**

On September 30, 2002 appellant, then a 55-year-old sewing machine operator, filed a claim alleging that she developed a right shoulder injury while performing her work duties which included pulling linen carts. The Office accepted her claim for right rotator cuff strain, impingement syndrome and authorized a distal clavicle excision which was performed on August 25, 2003. Appellant stopped work on August 25, 2003 and was placed on the periodic rolls.

By letter dated June 30, 2003, the Office advised appellant of her eligibility for benefits. In an attached Form CA-1008, the Office advised her of certain information concerning payment of bills and compensation and dual benefits. The Office noted:

“Once you return to work, or obtain new employment, notify this office immediately. Full compensation is payable only while you are unable to perform the duties of your regular job because of your accepted employment-related condition. If you receive a compensation check which includes payment for a period you have worked, return it to us immediately to prevent an overpayment of compensation.”

In a letter dated November 17, 2003, the Office outlined appellant’s entitlement to compensation benefits and her responsibility to return to work in connection with the accepted injury. An attached EN1049 form provided:

“OVERPAYMENTS. To minimize the possibility of an overpayment of compensation NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. Each payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised the [Office] that you are working....”

\* \* \*

“CERTIFICATION. I have read the information contained in the EN1049 and understand the conditions under which I may receive compensation and the items I must report to the Department of Labor, Office of Workers’ Compensation Programs, in connection with my claim. I agree to be bound by these conditions.

“I understand that willful failure on my part to comply with these conditions can result in termination or forfeiture of benefits and liability for the resulting overpayments....”

On February 7, 2005 the employing establishment offered appellant a job as a permanent sewing machine operator. On March 8, 2005 appellant accepted the position and returned to work on March 14, 2005. On June 15, 2005 she telephoned the Office to advise that she stopped work in April 2005 and had not received compensation benefits. The Office instructed appellant to submit a Form CA-7, claim for compensation, with supporting medical documentation.

In a letter dated June 27, 2005, the Office advised appellant that the offered position was suitable, advised her of the sanctions for refusal of suitable work and allowed her 30 days to reply. On July 27, 2007 it advised her that the position of a sewing machine operator was suitable work. The Office afforded appellant 15 additional days to accept the job offer. In a letter dated August 9, 2005, she disagreed with the proposed termination of benefits.

In a decision dated August 11, 2005, the Office terminated appellant's compensation under section 8106(c) on the grounds that she abandoned suitable work. On August 23, 2005 appellant requested an oral hearing.<sup>1</sup>

In correspondence dated August 30, 2005, the employing establishment noted that appellant returned to limited duty on March 14, 2005. Prior to that time, she was on the periodic rolls receiving compensation for her work-related injury. The employer noted that appellant's case history revealed that she continued to receive compensation through May 14, 2005 and that an overpayment of benefits was created.

In a November 23, 2005 overpayment discovery notification form, the Office noted that appellant returned to work on March 14, 2005 and compensation benefits continued to be paid through May 14, 2005. In a February 1, 2006 case history inquiry report, for the period October 17, 2003 to May 14, 2005, the Office noted that from February 20 to March 19, 2005 appellant was paid net benefits of \$1,389.96 on March 19, 2005, from March 1 to 19, 2005 she was paid net benefits of \$39.30 on April 8, 2005, from March 20 to April 16, 2005 she was paid net benefits of \$1,447.88 on April 16, 2005 and from April 17 to May 14, 2005 she was paid net benefits of \$1,447.88 on May 14, 2005. All checks were directly deposited into appellant's account.<sup>2</sup>

In a supplemental roll payment worksheet dated May 26, 2006, the Office calculated that appellant was overpaid gross benefits of \$3,879.43 for the period March 14 to May 14, 2005. The Office noted that appellant returned to work full-time limited duty on March 14, 2005 and was paid wage-loss compensation for the period March 14 to May 14, 2005, a total of 62 days. The Office calculated the overpayment to be \$3,879.43.

In a June 6, 2006 letter, the Office made a preliminary determination that appellant had received a \$3,879.43 overpayment of compensation from March 14 to May 14, 2005 because she received wage-loss benefits for temporary total disability after she had returned to full-time limited-duty work on March 14, 2005. Although appellant stopped working in April 2005 she

---

<sup>1</sup> The Office did not acknowledge the hearing request and, on November 16, 2005, appellant requested reconsideration. After the Office denied the reconsideration request on January 31, 2006, she appealed the termination and reconsideration decisions to the Board. On November 28, 2006 the Board remanded the case finding that the Office should have acted on appellant's timely hearing request prior to issuing a decision on her reconsideration request. The Board directed the Office to take appropriate action on the hearing request. Docket 06-809 (issued November 28, 2006).

<sup>2</sup> In a separate decision, the Office determined that appellant received an overpayment of compensation of \$250.92 for the period September 24, 2004 to January 22, 2005 because postretirement life insurance proceeds were not deducted from appellant's compensation. In a memorandum dated June 29, 2006, the Office terminated the collection action and wrote off the overpayment.

was not entitled to compensation benefits because she abandoned her limited-duty job. The Office found that appellant was at fault in creating the overpayment because she accepted payment that she knew or reasonably should have known to be incorrect. It informed appellant that she had the right to submit evidence or argument if she disagreed with the Office's finding. The Office also informed appellant that she had a right to a prerecoupment hearing before an Office hearing representative. It instructed appellant to complete an enclosed overpayment recovery form and submit supporting documentation.

In a decision dated July 31, 2007, an Office hearing representative reversed the Office's August 11, 2005 decision terminating her monetary compensation. The hearing representative found that suitable light duty was not offered to appellant. She noted that the February 7, 2005 job offer was deficient as it failed to provide a complete and accurate job description or the physical requirements of the offered position. The hearing representative instructed the Office to reinstate compensation effective the date of appellant's work stoppage in April 2005.

By decision dated January 9, 2008, the Office found that appellant received a \$3,879.43 overpayment of compensation from March 14 to May 15, 2005 for which she was at fault in creating. It advised that the overpayment occurred because appellant returned to work on March 14, 2005 and continued to receive compensation for total disability until May 15, 2005. The Office found that appellant was at fault in creating the overpayment because she reasonably should have been aware that she was not entitled to compensation benefits while working. It stated that the overpayment of compensation would be recovered by withholding \$100.00 from each of appellant's continuing compensation payments beginning February 16, 2008.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8116(a) of the Act<sup>3</sup> states:

“(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except--

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death; and
- (4) retired, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services....<sup>4</sup>

---

<sup>3</sup> 5 U.S.C. § 8116(a).

<sup>4</sup> *Id.*

### **ANALYSIS -- ISSUE 1**

The record indicates that appellant returned to full-time work at the employing establishment on March 14, 2005. Appellant continued to receive compensation for temporary total disability through May 15, 2005. As noted above, she is not entitled to receive compensation for total disability after she has returned to work. Accordingly an overpayment of compensation has been created.

Since the evidence indicated that appellant returned to full-time work at wages equal to or exceeding his date-of-injury wages on March 14, 2005, she would not be entitled to any compensation for wage loss after that date. The Office reported that appellant abandoned her limited-duty position in April 2005 and was therefore not entitled to compensation benefits. The Office determined that there was an overpayment of compensation in the amount of \$3,879.43 for the period March 14 to May 15, 2005. The overpayment worksheet dated May 26, 2005 sets forth the inclusive dates where appellant returned to work and also received compensation benefits and determined that the debt owed was \$3,879.43. However, the hearing representative's July 31, 2007 decision reversed the Office's August 11, 2005 decision terminating appellant's compensation under section 8106(c) and instructed the Office to reinstate her compensation as of April 2005.

The Board finds that the period of the overpayment, March 14 to May 15, 2005, is incorrect based on the hearing representatives July 31, 2007 decision that appellant was entitled to compensation benefits retroactive to her work stoppage in April 2005. Consequently, the period of the overpayment would be from March 14, 2005 to an unspecified date in April 2005.<sup>5</sup>

The Board finds that the Office properly found that appellant received an overpayment of compensation. However, the Office did not properly determine the period of the overpayment. Consequently, the amount of overpayment found by the Office, \$3,879.43, is also incorrect. The case will be remanded to the Office to determine the date that appellant stopped work in April 2005 and a new determination of the amount of the overpayment of compensation. The Office should provide a detailed memorandum explaining its calculation and any other relevant information.

As the Board has set aside the Office's finding on the amount of the overpayment, the case is not in posture for a decision regarding fault or recovery of the overpayment from continuing compensation benefits.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation beginning March 14, 2005. The Board finds that the Office incorrectly determined the period of the overpayment and the amount of the overpayment and that the Office must further develop the

---

<sup>5</sup> The hearing representative did not specify and the record does not indicate the exact date of appellant's work stoppage in April 2005.

record regarding the period and the amount of the overpayment. The Board further finds that the case is not in posture for a decision regarding fault or recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside and remanded in part for further action consistent with this decision.

Issued: October 9, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board