



On January 27, 2003 she returned to light duty, working a regular 30-hour, 6-hour/five-day-a-week schedule.

On May 28, 2003 appellant filed a Form CA-2a, alleging that she sustained a recurrence of disability on May 19, 2003 which was causally related to her accepted bilateral carpal condition. She sought benefits for temporary total disability for the period May 19 through June 1, 2003 and for wage-loss compensation based on partial disability beginning on June 2, 2003 and continuing.

In a May 19, 2003 report, Dr. Timothy Kremcheck, Board-certified in orthopedic surgery, related that appellant had hit her hand, the dorsum of her hand and her proximal interphalangeal joint (PIP) on a door. He noted that as a result of this incident appellant experienced an increased amount of pain and discomfort.

By letter dated June 4, 2003, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits based on a recurrence of disability. It informed her that, under the Federal Employees' Compensation Act, a recurrence of disability is established when the work-related condition materially worsens without intervening injury or exposure, to the point where the claimant is no longer medically capable of performing the duties performed prior to the work stoppage. The Office noted that the medical evidence indicated that appellant sustained an intervening injury the May 2003 incident in which she hit her hand and PIP on a door, which resulted in her disability. It informed appellant that she needed to submit medical evidence attributing her May 19, 2003 work stoppage to a natural worsening of her accepted condition without intervening injury or exposure. This included a comprehensive medical report and a well-reasoned opinion indicating that her accepted bilateral carpal tunnel condition materially and spontaneously worsened to the point where she was no longer medically capable of performing the duties you were performing prior to her work stoppage. The Office provided appellant with 30 days to submit the requested evidence.

By decision dated August 7, 2003, the Office denied her claim for a recurrence of disability. It noted that it had received medical evidence indicating she sustained an intervening, nonwork-related injury in May 2003 when she hit her hand on a door.

On December 29, 2004 appellant filed a Form CA-7, claim for compensation, claiming 612 hours of leave without pay of wage loss for the period January 30, 2003 to December 18, 2004.<sup>1</sup> On approximately March 11, 2005 the Office issued appellant a compensation check in the amount of \$9,270.00, representing 672 hours of lost wages for the periods January 30, 2003 to March 11, 2005 and March 12 to April 2, 2005.<sup>2</sup>

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<sup>1</sup> Appellant also submitted a Form 7(a) time analysis sheet indicating that she worked a regular 30-hour, 6-hour -- five-day-a-week schedule from January 30 to April 12, 2003.

<sup>2</sup> Appellant submitted Form 7a time analysis sheets dated April 20 and 27, 2005 which indicated that she worked a regular 30-hour, 6-hour -- five-day-a-week schedule from March 12 to April 2, 2005, after which she was placed on total disability to undergo left carpal tunnel release.

On April 8, 2005 appellant underwent surgery for left carpal tunnel release.

On August 21, 2007 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$7,838.07 because appellant received compensation to, which she was not entitled. It found that she was at fault in the matter because she knew or should have known that the payments she had been receiving were incorrect. The Office noted that as of March 9, 2002 appellant began working 33 hours per week, until October 15, 2002, when she stopped working to undergo right carpal tunnel release surgery. It paid compensation benefits for total disability from, October 15, 2002 to January 24, 2003, at the rate of \$602.25, representing an hourly rate of \$18.25 times 33 hours. However, appellant should have been paid at the rate of \$657.00 during this period, based on an hourly rate of \$18.25 times 36 hours. The Office further found that appellant was released to return to work on January 27, 2003 at a bid job for 6 hours per day, six days per week for a total of 36 hours per week based on a rate of \$18.25 per hour. However, appellant never worked the 36 hours per week bid job, but returned to work on a reduced schedule working only 30 hours per week as of January 30, 2003.

The Office noted that the August 7, 2003 decision had denied appellant's May 19, 2003 claim for a recurrence of total disability from May 19 to June 1, 2003 and compensation for ongoing partial disability from June 2, 2003 and continuing. It found that her December 29, 2004 Form CA-7 claim for compensation from January 30, 2003 through December 18, 2004 overlapped the August 7, 2003 decision denying a recurrence of disability. The Office found that appellant was only entitled to compensation benefits for the periods October 15, 2002 to January 24, 2003 and January 30 to May 18, 2003, which resulted in an overpayment for the period May 19, 2003 to April 2, 2005. It further noted that, prior to stopping work on April 8, 2005 to undergo left carpal tunnel release, appellant was working a regular, partial work schedule at 30 hours per week. Additionally, the Office noted that appellant had been receiving basic life benefits which were not being deducted from her weekly compensation payments and optional life insurance premiums which were being deducted at the lower compensation rate of \$602.25.

The Office calculated the total amount of overpayment as follows: appellant was entitled to receive compensation at the weekly rate of \$657.00 from October 15, 2002 to January 24, 2003, equaling \$7,292.70. It subtracted compensation the compensation actually paid during this period at the hourly rate of \$602.25 or \$6,638.47. This equaled \$654.23 which the Office owed appellant. It further noted that the compensation, the Office paid appellant at the rate of \$657.00 from January 30, 2003 to March 11, 2005, equaling \$9,270.00,<sup>3</sup> plus compensation at the rate of \$657.00 from March 12 to April 12, 2005, prorated to \$345.17. The Office subtracted wage-loss compensation in the amount of \$1,182.60 due appellant at the rate of \$657.25 from January 30, 2003 to March 30, 2005. This totaled an overpayment of \$8,432.57.

The Office then deducted \$55.00, the proper amount of basic life insurance due from October 15, 2002 to January 24, 2003 based on a weekly rate of \$657.00, added \$40.22 in optional life insurance based on a weekly rate of \$657.00 from October 15, 2002 to January 24, 2003, \$40.22 and subtracted \$35.49, for a total life insurance overpayment \$4.73. It then added

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<sup>3</sup> The Office noted in a July 16, 2007 worksheet that appellant was entitled to compensation up to the date of the May 19, 2003 decision denying her claim for a recurrence of disability.

the totals above, \$8,432.57, \$55.00 and \$4.73 and subtracted \$654.23, compensation due appellant from October 15, 2002 to January 15, 2003, for a total overpayment of \$7,838.07.

The Office found that there was sufficient evidence in the record indicating that appellant was aware of the fact that she was not entitled to receive the \$9,270.00 payment for wage-loss compensation in March 2005. It noted that it had already issued its August 7, 2003 decision, which denied her claim for recurrence of total disability from May 19 to June 2, 2003 and compensation for ongoing partial disability as of June 2, 2003 and continuing, based on insufficient medical evidence indicating that her current disability was the result of an objective and spontaneous worsening of her accepted, work-related bilateral carpal tunnel condition. The Office therefore determined that appellant was at fault with regard to the creation of the \$7,838.07 overpayment.

The Office advised appellant that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention. It further advised appellant that when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience. The Office informed appellant that, if she disagreed with the decision she could, within 30 days, submit evidence or argument to it or request a precoupment hearing with the Branch of Hearings and Review on the matter of the overpayment and that any response she wished to make with regard to the overpayment should be submitted within 30 days of the October 20, 2003 letter.

In a decision dated November 28, 2007, the Office finalized the preliminary determination but reduced the overpayment to \$1,628.82. It noted that appellant had been issued a schedule award for four percent of her right arm on November 28, 2007 in the amount of \$6,149.52. The Office subtracted the \$6,149.52 due appellant for her schedule award from her \$7,838.07 overpayment, which equaled a total \$1,628.82 overpayment.

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

Compensation for total disability under the Act is payable when the employee starts to lose pay.<sup>4</sup> Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him from earning the wages earned before the work-related injury.<sup>5</sup> Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity.<sup>6</sup>

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance with one

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<sup>4</sup> 20 C.F.R. § 10.401(a) (2003).

<sup>5</sup> *Id.* at § 500(a) (2003).

<sup>6</sup> *Id.* at § 10.403(b) (2003).

or more options.<sup>7</sup> The coverage for basic life is effective unless waived<sup>8</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>9</sup> Under the FEGLI program, insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments. The injured employee remains responsible for all insurance premiums. When FEGLI premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because the Office must pay the full premium to the Office of Personnel Management (OPM) upon discovery of the error.<sup>10</sup>

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

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$7,838.07 for the period May 19, 2003 to April 2, 2005. The record shows that appellant received an overpayment during the period in question because she received \$7,838.07 in compensation to which she was not entitled after it denied her claim for a recurrence of disability on August 7, 2003. Appellant subsequently accepted a March 2005 check for \$9,270.00 from the Office based on wage-loss compensation claimed for 672 hours between January 30, 2003 and December 18, 2004. The Office, however, noted that the August 7, 2003 decision found that appellant had sustained a nonwork-related intervening accident in May 2003 which caused an onset of pain; therefore, any disability which occurred thereafter was unrelated to her accepted bilateral carpal tunnel condition. Based on this decision, it not only denied the request for total disability compensation between May 19 and June 2, 2003, but also denied compensation for continuing partial disability compensation as of June 2, 2003 and continuing. This determination was proper, as the record indicates that appellant continued to work a partial schedule of 30 hours per week beginning June 2, 2003, as she did prior to her May 19, 2003 work stoppage, until April 8, 2005, when she underwent left carpal tunnel release.

The Office calculated the \$7,838.07 overpayment by taking the net amount it overpaid appellant between May 19, 2003 and April 2, 2005, at the weekly rate of \$657.00, \$8,432.57, adding \$55.00 and \$4.73 in overpayments for basic and optional life insurance and subtracting \$654.23, compensation it owed appellant for the period October 15, 2002 to January 15, 2003, for a total overpayment of \$7,838.07. Based on this determination, the Office properly

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<sup>7</sup> See *James Lloyd Otte*, 48 ECAB 334, 337 (1997); Part 870 -- *Basic Life Insurance*, Subpart B -- Coverage; see 5 C.F.R. § 870.201.

<sup>8</sup> 5 C.F.R. § 870.204(a).

<sup>9</sup> 5 C.F.R. § 870.401(a).

<sup>10</sup> See *Otte*, *supra* note 7.

found that appellant received an overpayment of compensation in the stated amount during that period.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of the Act<sup>12</sup> provides that 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 Act or would be against equity and good conscience.” No waiver of an overpayment is possible if the claimant is not “without fault” in helping to create the overpayment.<sup>13</sup>

In determining whether an individual is with fault, section 10.433(a) of the Office’s regulations provides in relevant part:

“A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to provide information which the individual knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.”<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Office applied the third standard in determining that appellant was at fault in creating the overpayment.

Even if the overpayment resulted from negligence on the part of the Office, this does not excuse the employee from accepting payment which appellant knew or should have known she was not entitled.<sup>15</sup> Appellant received and did not question a compensation check for \$9,270.00

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<sup>11</sup> The Board notes that the Office issued an overpayment decision dated November 28, 2007, which determined that appellant was not at fault and granted her a waiver for an overpayment for the period August 27, 2005 through June 24, 2006 in the amount of \$3,465.88. The Board does not have jurisdiction over this decision. Appellant requested an oral hearing on December 27, 2007, prior to her February 18, 2008 appeal to the Board; the hearing was held on April 18, 2008. By decision dated June 8, 2008, an Office hearing representative vacated the schedule award and remanded for further development of the medical evidence. As the claim for an additional schedule award claim is still pending, the Board finds it is not in posture for review.

<sup>12</sup> 5 U.S.C. § 8129(a)(b).

<sup>13</sup> *Bonnye Mathews*, 45 ECAB 657 (1994).

<sup>14</sup> 20 C.F.R. § 10.433(a).

<sup>15</sup> *See Russell E. Wageneck*, 46 ECAB 653 (1995).

for the period May 19, 2003 through April 2, 2005, notwithstanding the fact that the Office denied her claim for recurrence on August 7, 2003 because it found that she sustained an intervening injury unrelated to her employment and notwithstanding the fact that on June 2, 2003 she returned to the same light-duty schedule she was working prior to stopping work on May 19, 2003. Based on this set of facts, appellant knew or should have known that she was not entitled to the amount of compensation she received. Upon her receipt of the March 2005 check, she had a duty to contact the Office and inquire as to whether acceptance of this payment was appropriate or return the \$9,270.00 check issued for wage-loss compensation. Instead, appellant accepted and did not question the receipt of this check.

For these reasons, the Board finds that, under the circumstances of this case, the Office properly found that appellant reasonably knew or should have known that the check issued by it for the period May 19, 2003 to April 2, 2005, which contained a net overpayment in the amount of \$7,838.07, was in error. As appellant was not without fault under the third standard outlined above, recovery of the overpayment of compensation in the amount of \$1,628.82 -- the adjusted overpayment amount, reduced for compensation owed appellant between October 15, 2002 to January 24, 2003 and the schedule award she received on November 28, 2007 -- may not be waived.<sup>16</sup> Thus, the Office's November 28, 2007 overpayment decision is affirmed.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$7,838.07 for the period May 19, 2003 to April 2, 2005. The Board finds that it properly found that appellant was at fault in creating the overpayment.

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<sup>16</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation* Chapter 6.300.7(a) September 1994 recognizes that the strategy of recovery of the debt from accrued compensation is proper.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 7, 2009  
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