

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

S.J., Appellant)	
)	
and)	Docket No. 09-370
)	Issued: August 18, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Round Rock, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2008 appellant filed a timely appeal of the August 18, 2008 merit decision of the Office of Workers' Compensation Programs, which found an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant received an overpayment of \$785.12 for the period March 2 to 18, 2006; and (2) whether she is entitled to waiver of recovery of the overpayment.

FACTUAL HISTORY

Appellant, a 44-year-old mail carrier, has an accepted claim for bilateral carpal tunnel syndrome, which arose on or about July 28, 2004. On December 15, 2005 she underwent an Office-approved right carpal tunnel release. The Office paid appropriate wage-loss compensation for temporary total disability beginning December 15, 2005. Appellant was

placed on the periodic compensation rolls effective January 22, 2006. On March 2, 2006 she returned to work in a part-time, limited-duty capacity, working four hours per day.¹

On June 18, 2008 the Office issued a preliminary determination that appellant received an overpayment of \$785.12 for the period March 2 to 18, 2006. It explained that she returned to work four hours per day beginning March 2, 2006, but she continued to receive compensation for eight hours per day through March 18, 2006.² Additionally, the Office indicated that appellant was not at fault in creating the overpayment.

On July 31, 2008 appellant submitted an overpayment recovery questionnaire. She reported no monthly income and monthly expenses of \$3,310.00.³ Appellant also reported \$35.00 in assets.

On August 18, 2008 the Office issued a final overpayment decision. Although appellant was not at fault in creating the \$785.12 overpayment, the Office denied her a waiver of recovery. It noted that she did not report her monthly income on the overpayment questionnaire and she had not provided any documentation to support her claimed monthly expenses. Because appellant failed to provide the necessary financial information, the Office found it impossible to determine whether she was entitled to a waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

If an employee returns to work and has earnings or is in a paid leave status, she is not entitled to receipt of temporary total disability benefits and actual earnings for the same time period.⁴

ANALYSIS -- ISSUE 1

Appellant was on paid leave status effective March 2, 2006, and she began working part time, four hours per day, on March 6, 2006. On March 18, 2006 the Office paid her wage-loss compensation for temporary total disability for the period February 19 to March 18, 2006. Because appellant had effectively returned to work on March 2, 2006, she was no longer entitled to eight hours of wage-loss compensation per day. Based on information provided by the employing establishment, the Office determined that she was only entitled to 36 hours of wage-loss compensation during the period March 2 to 18, 2006. The record establishes that appellant was overpaid \$785.12 for the above-noted period.

¹ Appellant used eight hours of annual leave on March 2, 3 and 4, 2006. March 5, 2006 was her scheduled day off and on March 6, 2006 she began her part-time employment duties.

² The Office found that appellant was only entitled to 36 hours of lost wages for the period March 2 to 18, 2006, which totaled \$507.68. Appellant had already been paid \$1,292.80 for this same time period.

³ Appellant's July 31, 2008 EN1032 form reported monthly income of \$2,100.00 as a mail carrier since March 2007.

⁴ 20 C.F.R. § 10.403(a), (c) (2008); *Daniel Renard*, 51 ECAB 466, 469 (2000).

LEGAL PRECEDENT -- ISSUE 2

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of the Federal Employees' Compensation Act or would be against equity and good conscience.⁵ Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office.⁶ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁷

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office.⁸ 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.⁹ This information will also be used to determine the repayment schedule, if necessary.¹⁰ Failure to submit the requested financial information in a timely fashion "shall result in denial of waiver..."¹¹

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for waiver of recovery of the overpayment. In a July 31, 2008 overpayment recovery questionnaire, appellant misrepresented the amount of her monthly income. Although she was working at the time, she reported no income on the July 31, 2008 questionnaire.¹² Appellant also failed to provide any documentation to substantiate her reported \$3,310.00 in monthly expenses. The regulations clearly indicate that a failure to submit the requested financial information "shall result in denial

⁵ 5 U.S.C. § 8129(b) (2006); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

⁶ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents, the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (October 2004).

⁷ 20 C.F.R. § 10.437(a), (b).

⁸ *Id.* at § 10.438(a).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at § 10.438(b).

¹² On a similarly dated EN1032 form, appellant reported current monthly earnings of \$2,100.00.

of waiver....”¹³ In light of appellant’s failure to provide complete and accurate financial information as requested, the Board finds that waiver of recovery of the overpayment is unwarranted.

CONCLUSION

Appellant received an overpayment of \$785.12 for the period March 2 to 18, 2006. The Board further finds that she is not entitled to waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2008 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: August 18, 2009
Washington, DC

David S. Gerson, Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

¹³ 20 C.F.R. § 10.438(b).