

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Montgomery, AL, Employer**

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**Docket No. 08-1837
Issued: February 17, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated June 5, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$843.87; and (2) whether appellant was at fault in the creation of the overpayment such that it was not subject to waiver.

FACTUAL HISTORY

On July 11, 2007 appellant then a 47-year-old letter carrier, filed a traumatic injury claim alleging that he sustained multiple injuries in an employment-related motor vehicle accident. The Office accepted appellant's claim for tear of the left medial meniscus, back strain and left shoulder strain. It informed appellant of his obligation to provide notification if he return to work. The Office stated, "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 October 2, 2007, the Office entered appellant on the periodic rolls and informed him that he would receive a regular payment from September 30 to October 27, 2007 in the amount of \$2,625.37. It again instructed appellant to provide immediate notification if he returned to work.

Appellant returned to work on October 19, 2007. The Office noted that appellant received compensation through October 27, 2007 and that he received an overpayment in the amount of \$843.88. By letter dated October 26, 2007, it informed appellant of a preliminary finding that he had received an overpayment in the amount of \$843.88 as he returned to work on October 19, 2007 and received compensation benefits for wage-loss compensation through October 27, 2007. The Office found that appellant was at fault in the creation of the overpayment as he knew or should have known that he was not entitled to compensation for wage loss while he was working.

Appellant requested a preresoupment hearing and submitted financial information. He indicated that his monthly income was \$3,781.00 and that his monthly expenses were \$3,278.00. Appellant testified at his oral hearing on March 17, 2008 and stated that he was unaware that he received an overpayment as he returned to work in the middle of a pay period and his wages from the employing establishment was approximately half of the normal amount. The hearing representative allowed appellant 30 days to submit additional financial information. By decision dated June 5, 2008, the hearing representative affirmed the Office’s preliminary determination that appellant had received an overpayment of compensation in the amount of \$843.87, that he was at fault in the creation of the overpayment and that the overpayment was not therefore subject to waiver.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees’ Compensation Act¹ provides that the United States “shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. A claimant, however, is not entitled to receive temporary total disability and actual earnings for the same period.² Office procedures provide that an overpayment in compensation is created when a claimant returns to work but continues to receive wage-loss compensation.³

ANALYSIS -- ISSUE 1

The Office issued appellant a periodic rolls payment covering the period September 30 to October 27, 2007. Appellant returned to work on October 19, 2007. He is not entitled to receive

¹ 5 U.S.C. §§ 8101-8193, 8102(a).

² *Id.* at § 8116(a).

³ *Danney E. Haley*, 56 ECAB 393, 400 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

both wages from the employing establishment and wage-loss compensation from the Office for the same period October 19 through 27, 2007. Appellant has therefore received an overpayment of compensation. The Office calculated this overpayment in the amount of \$843.87 and appellant has not contested the amount. The Board finds that appellant has received an overpayment of compensation in the amount of \$843.87 for the period October 19 through 27, 2007.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act⁴ provides: Adjustment or recovery by the United States may not be made when 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.”

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from the Office are proper. The recipient must show good faith and exercise a high degree of care in reporting events, which may affect entitlement to or the amount of benefits. 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 he or she knew or should have known to be incorrect; or (2) failed to provide information which he or she 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 (this provision applies only to the overpaid individual).⁵

Whether or not the Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.⁶

ANALYSIS -- ISSUE 2

The Office applied the third standard to appellant’s actions in finding that he was at fault in the creation of the overpayment and that the overpayment was not therefore subject to waiver. Appellant received a letter from the Office dated October 2, 2007 which stated that he would receive a regular periodic rolls payment covering the period September 30 to October 27, 2007 in the amount of \$2,625.37. Appellant returned to work on October 19, 2007 and knew or should have known based on the information contained in the August 31 and October 2, 2007 letters that he was not entitled to the entire amount of \$2,625.37 received as he had returned to work and earned wages beginning on October 19, 2007. The Board finds that appellant was at fault in the creation of the \$843.87 overpayment and that this overpayment is not subject to waiver. The

⁴ 5 U.S.C. § 8129(b).

⁵ 20 C.F.R. § 10.433(a).

⁶ *Id.* at § 10.433(b).

Board notes that it does not have jurisdiction to review the Office's finding that the overpayment would be recovered in a lump sum. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$843.87, that he was at fault in the creation of the overpayment and that the overpayment may not be waived.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 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

⁷ *Judith A. Cariddo*, 55 ECAB 348, 353 (2004).