



of each of his lower extremities. The Office authorized an additional schedule award for eight percent impairment of lower extremities.

By decision dated May 12, 2004, the Office granted appellant a schedule award for an additional 29 percent impairment of each of his lower extremities. The period of the award was from March 4, 2004 through May 17, 2007. In a letter dated May 18, 2004, appellant requested a lump-sum payment of his May 12, 2004 schedule award noting that he was retired from the employing establishment and receiving benefits from the Office of Personnel Management. On February 12, 2005 he signed the lump-sum agreement provided by the Office accepting the sum of \$75,333.82 in full payment of his schedule award from February 20, 2005 to May 17, 2007. Appellant indicated by his signature that he understood that this lump-sum payment was “full and final settlement” and that he was entitled to no further monetary benefits for the duration of his schedule award. On April 8, 2005 the Office issued a check to him for the amount of \$75,333.82 which he endorsed. On February 3, 2006 the Office issued appellant another check in the amount of \$75,333.82 which he endorsed.

By letter dated June 11, 2007, the Office issued a preliminary determination of overpayment and informed appellant that he had received an overpayment in the amount of \$75,333.82 as he had received a duplicate lump-sum schedule award payment. It 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 two lump-sum payments for the same schedule award. Appellant responded and requested a preresoupment hearing. He testified at the oral hearing on January 25, 2008 and stated that he was not at fault in the creation of the overpayment as he had not retained a copy of the lump-sum agreement and was not aware that he was not entitled to the additional \$75,333.82.

By decision dated July 8, 2008, the hearing representative affirmed the Office’s June 11, 2007 preliminary determination of overpayment. He found that appellant had received an overpayment in the amount of \$75,333.82, that appellant was at fault in the creation of the overpayment and that the overpayment was not subject to waiver. The hearing representative concluded that the overpayment should be repaid in full.

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

Section 8116 of the Federal Employees’ Compensation Act defines the limitations on the right to receive compensation benefits. This section of the Act provides that, while an employee is receiving compensation, he may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>1</sup> When a claimant receives a duplicative compensation payment for a period that he has already received compensation, an overpayment of compensation is created.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8116(a).

<sup>2</sup> See *Lawrence J. Dubuque*, 55 ECAB 667, 670-71 (2004).

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

Appellant requested a lump-sum payment of his May 12, 2004 schedule award. He signed a lump-sum agreement on February 12, 2005 which clearly stated that appellant was entitled to \$75,333.82 as full payment of his schedule award for the period February 20, 2005 to May 17, 2007. Appellant indicated by his signature that he understood that this lump-sum payment was “full and final settlement” and that he was entitled to no further monetary benefits for the duration of his schedule award. The Office then issued appellant a check for \$75,333.82 on April 8, 2005.

The Office inadvertently issued appellant a second check for the amount of \$75,333.82 on February 3, 2006. Appellant has clearly received a duplicate payment in violation of his lump-sum agreement and has received an overpayment in the amount of \$75,333.82.

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

Section 8129(b) of the Act<sup>3</sup> 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).<sup>4</sup>

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.<sup>5</sup>

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

Appellant signed a lump-sum agreement on February 12, 2005 which specified the amount of compensation and the period covered by this compensation. He received and

---

<sup>3</sup> 5 U.S.C. § 8129(b).

<sup>4</sup> 20 C.F.R. § 10.433(a).

<sup>5</sup> *Id.* at § 10.433(b).

endorsed a check from the Office in this amount. Appellant then received and endorsed a duplicate payment in the same amount of \$75,333.82 less than one year later. Based on these facts and circumstances, the Office properly found that he accepted a payment which he knew or should have known was incorrect. Appellant was at fault in the creation of the overpayment and this overpayment is not subject to waiver. The Board further 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.<sup>6</sup>

**CONCLUSION**

The Board finds that appellant has received an overpayment of compensation in the amount of \$75,333.82. The Board further finds that he was at fault in the creation of this overpayment and that the overpayment is not subject to waiver.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>6</sup> *Judith A. Cariddo*, 55 ECAB 348, 353 (2004).