

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

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**V.S., Appellant**

**and**

**DEPARTMENT OF THE NAVY, HUMAN  
RESOURCES OFFICE, New Orleans, LA,  
Employer**

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**Docket No. 08-2068  
Issued: March 24, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 21, 2008 appellant timely filed an appeal from an Office of Workers' Compensation Programs' April 17, 2008 overpayment decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this overpayment case.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$32,415.32 for the period July 1, 2006 through April 17, 2007; (2) whether the Office properly denied waiver of recovery of the overpayment; and (3) whether the Office properly directed recovery at \$250.00 from her continuing compensation payments.

**FACTUAL HISTORY**

On May 4, 2006 appellant, then a 51-year-old supervisory manpower services specialist, filed a traumatic injury claim alleging that on April 27, 2005 she slipped and fell while walking down a hallway at work. She experienced pain in her right knee, both breasts, lower back and

both wrists. By letter dated May 23, 2005, the Office accepted appellant's claim for lumbago, sprain/strain of right knee/leg unspecified and bilateral sprain/strain of the wrists. The claim was also accepted for right knee medial meniscus tear. On May 19, 2006 appellant declined an offer of reassignment by the employing establishment and elected retirement. The Office of Personnel Management (OPM) started paying retirement benefits on July 1, 2006.

By letter to the Office dated January 22, 2007, appellant noted difficulty in reaching a retirement counselor and was concerned that she was receiving both workers' compensation benefits and retirement payments. She inquired as to whether an overpayment was created.

On August 15, 2007 the Office made a preliminary determination that appellant received an overpayment of compensation benefits in the amount of \$32,415.32. Appellant elected to receive OPM retirement benefits as of July 1, 2006 but continued to receive compensation benefits under the Act.<sup>1</sup> The Office found that appellant was without fault in the creation of the overpayment and provided instructions for disagreeing with the fact that the overpayment occurred or the amount and how to request a waiver. It also sent appellant an overpayment recovery questionnaire. Appellant responded, requesting that the Office make a decision based on the written evidence. She agreed with the overpayment memorandum and noted that she tried to alert the government of the potential duplication of benefits on several occasions. Appellant completed the overpayment questionnaire but failed to sign or date it. She listed monthly income of \$2,397.00 and monthly expenses of \$2,414.00. Appellant noted her expenses as follows: rent or mortgage \$897.00; food 500.00; utilities \$365.00, other expenses \$392.00; payment to Navy Federal Credit Union \$215.00; GEICO Master Card \$32.00; and Target VISA \$13.00.

By decision dated April 17, 2008, the Office finalized its determination that appellant had received an overpayment in the amount of \$32,415.32 and denied waiver of the recovery of the overpayment. It directed recovery by withholding \$250.00 per month from her continuing compensation payments.

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

Section 8116(a) of the Federal Employees' Compensation Act<sup>2</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

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<sup>1</sup> The Office noted that appellant received an overpayment from June 11 through July 8, 2006 of \$900.30. In reaching this amount, it noted that for this period appellant was paid \$3,151.04 which included an improper payment for eight days. The Office divided \$3,151.04 by 28 days and determined that appellant was paid \$112.54 per day; it then multiplied this figure by 8 days to arrive at \$900.30. For the period July 9, 2006 through January 20, 2007, appellant received seven compensation checks in the amount of \$3,151.04 which constituted an overpayment of \$22,057.28. For the period January 21 through April 17, 2007, appellant received three checks of \$3,152.58 each which equaled an overpayment of \$9,457.74. The total of these three periods (\$900.30 plus \$22,057.23 plus \$9,457.32) equaled an overpayment of \$32,415.32.

<sup>2</sup> 5 U.S.C. § 8116(a).

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 [a]rmed [f]orces or other uniformed services....”

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

Appellant began receiving civil service retirement benefits on July 1, 2006. At that time, she was still receiving compensation benefits under the Act. The record supports that appellant received OPM and compensation benefits for the period July 1, 2006 through April 17, 2007. The Board finds that the Office properly determined that this resulted in an overpayment of \$32,415.32 and properly explained its calculations. Accordingly, the fact and amount of the overpayment is affirmed.

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

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.<sup>3</sup> If it finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.<sup>4</sup> The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. 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. This information will also be used to determine the repayment schedule, if necessary.<sup>5</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.<sup>6</sup>

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<sup>3</sup> 20 C.F.R. § 10.433(a).

<sup>4</sup> *Id.* at § 10.434.

<sup>5</sup> *Id.* at § 10.438(a).

<sup>6</sup> *Id.* at § 10.438(b).

**ANALYSIS -- ISSUE 2**

The Office properly found that appellant was not at fault in creating the overpayment. Although appellant was without fault in creating the overpayment, she nevertheless bears the responsibility for providing the financial information necessary to support her request for waiver of the recovery of the overpayment. In response to the hearing representative's February 28, 2008 letter, appellant submitted a completed recovery questionnaire but did not submit the required financial documentation. Furthermore, the Board notes that she did not sign or date the form. The Office made it clear that appellant was to attach supporting financial documentation to verify the income and expenses listed so that the Office could determine whether she was entitled to a waiver or determine the proper repayment schedule. Because appellant failed to submit the complete requested financial documentation, the Office denied her request for waiver. As the regulations provide, failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>7</sup> The Board will therefore affirm the Office's hearing representative's decision denying waiver of the recovery of the overpayment.

**LEGAL PRECEDENT -- ISSUE 3**

The amount of adjustment of continuing compensation to recover an overpayment lies within the Office's discretion. The analysis that determines the amount of adjustment is substantially the same as that used to determine waiver.<sup>8</sup>

**ANALYSIS -- ISSUE 3**

The Office determined that the overpayment would be recovered by withholding \$250.00 from each of appellant's continuing compensation checks until the payment was repaid in full. As appellant did not submit the necessary supporting financial documentation, the Board finds that the Office did not abuse its discretion in setting this repayment schedule.<sup>9</sup>

**CONCLUSION**

The Board finds that the Office properly found an overpayment in the amount of \$32,415.32 for the period June 1, 2006 through April 17, 2007; properly denied waiver of the recovery of this overpayment; and properly determined that \$250.00 would be deducted from each continuing compensation payment until the amount was paid in full.

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<sup>7</sup> *Id.*

<sup>8</sup> *Howard R. Nahikian*, 53 ECAB 406 (2002).

<sup>9</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 17, 2008 is affirmed.

Issued: March 24, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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