

repetitive employment activities. The Office accepted her claim for right CTS, right CTS release, right ruptured rotator cuff, right reflex symptom dystrophy (upper limb) and bilateral radial styloid tenosynovitis. On December 9, 1999 it granted appellant a schedule award for an eight percent permanent impairment of her right upper extremity.

The record reflects that appellant's December 1, 1999 claim for left wrist injury was accepted for de Quervain's tenosynovitis of the left wrist. Her January 22, 2006 claim for left upper extremity injuries was accepted for left CTS and left rotator cuff tear.¹

On July 19, 2001 appellant was granted a schedule award in File No. xxxxxx736 for a three percent permanent impairment of her left upper extremity. The period of the award was from April 12 to June 16, 2001. On March 23, 2003 appellant received a schedule award for an additional five percent impairment of her right upper extremity.

On October 5, 2005 the Office granted appellant a schedule award for a 10 percent impairment of her left upper extremity and for a 28 percent impairment of her right upper extremity. In a May 17, 2006 decision affirming the October 5, 2005 schedule award decision, an Office hearing representative explained that the medical evidence of record established that appellant had a 10 percent permanent impairment of the left upper extremity and a 41 percent impairment of the right upper extremity. Accordingly, appellant was granted a schedule award for a 10 percent left upper extremity impairment and for an additional 28 percent right upper extremity impairment (41 percent less the 13 percent previously paid).

On November 29, 2007 the Office notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$6,285.36 due to the Office's failure to take into account her receipt of a previous schedule award for a three percent impairment of her left upper extremity. It found that she received payment for a schedule award for a 10 percent impairment of her left upper extremity, but that she should have received an award for only an additional 7 percent impairment. The Office determined that appellant received \$20,754.36 in schedule award payments for a 10 percent impairment to her left upper extremity (218.4 days for the period August 20, 2005 through March 26, 2006). It calculated the amount to which she was entitled for a 7 percent impairment (152.88 days payable for the period August 20, 2005 through January 19, 2006) to be \$14,469.00 and then subtracted the amount to which she was entitled (\$14,469.00) from the amount actually received (\$20,754.36), to find an overpayment of \$6,285.36. The Office further advised appellant of its preliminary determination that she was not at fault in the creation of the overpayment and of her right to request a telephone conference, a final decision based on the written evidence or a prerecoument hearing, if she objected to the decision or requested waiver of the overpayment. Appellant was advised to complete the enclosed overpayment recovery questionnaire and to submit supporting financial documents.

Appellant submitted an overpayment action request form, dated December 5, 2007, requesting a telephone conference. In a January 29, 2008 note of a telephone call, Terry Arient,

¹ On February 28, 2008 File No. xxxxxx518 was combined with File No. xxxxxx210, which became the master file. The record reflects that, at the time this appeal was filed, appellant was receiving compensation and medical benefits under File No. xxxxxx210.

of the Office, stated that she had informed appellant that the Office had received neither an overpayment recovery questionnaire nor supporting documents and that her requested telephone conference would be delayed pending receipt of those documents. A February 5, 2008 memorandum of a telephone call between appellant and M. Maloney of the Office, reflects her representation that her sole source of income was her \$2,900.00 monthly compensation.

Appellant submitted an overpayment recovery questionnaire dated February 4, 2008 reflecting monthly income in the amount of \$2,900.00 and available funds in the amount of \$300.00. On a separate sheet, she listed monthly expenses totaling \$3,112.00 as follows: Nicor gas -- \$200.00; water -- \$53.00; garbage -- \$50.00; mortgage -- \$1,719.00; car note -- \$440.00; telephone -- \$125.00; lights -- \$100.00; car gas -- \$150.00; food -- \$150.00; Direct TV -- \$125.00. Appellant stated that she was not aware of an overpayment or how it was calculated.

Appellant submitted supporting financial documents, including a February 3, 2008 mortgage statement from Beneficial Mortgage, reflecting a monthly payment in the amount of \$1,719.32; a 2007 tax return for herself and her husband, dated February 4, 2008, reflecting joint annual gross income of \$39,826.00; an HSBC loan agreement reflecting monthly income of \$2,950.00; and a February 12, 2008 checking account statement from LaSalle Bank, reflecting a negative balance.

By decision dated February 29, 2008, the Office finalized its determination that appellant received an overpayment of compensation in the amount of \$6,285.36 due to her receipt of schedule award payments to which she was not entitled. It stated that, although appellant was found not to be at fault in creating the overpayment, she was not entitled to a waiver of recovery of the overpayment. The Office acknowledged that appellant had submitted a bank statement, mortgage statement, tax forms and a statement of monthly expenses, but stated that she “did not provide any supporting documentation to support [her itemized] expenses.” It found that appellant had not provided information to support a finding that the recovery would defeat the purpose of the Federal Employees’ Compensation Act or be against equity and good conscience. The Office determined that the amount of \$100.00 per month would be deducted from her continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

Section 8108 of the Act² provides for the reduction of compensation for subsequent injury to the same member as follows:

“The period of compensation payable under the schedule in section 8107(c) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if --

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

² 5 U.S.C. §§ 8101-8193.

(2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.”³

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$6,285.36. Therefore, the Office’s February 29, 2008 decision shall be affirmed as to fact and amount of overpayment.

Appellant initially received a schedule award for a three percent permanent impairment of the left upper extremity on July 19, 2001. On October 5, 2005 the Office granted her a schedule award for a 10 percent permanent impairment of her left upper extremity, based on its finding that the medical evidence established that she had a 10 percent total left upper extremity impairment. On May 17, 2006 an Office hearing representative affirmed the October 5, 2005 schedule award. However, the Office did not take into consideration appellant’s previous schedule award.⁴ The 10 percent impairment rating should have been reduced by 3 percent, the amount of the July 19, 2001 schedule award, resulting in a schedule award for a 7 percent left upper extremity impairment.⁵

The record reflects that appellant received \$20,754.36 in schedule award compensation for the period August 20, 2005 through March 26, 2006, but was entitled to receive only \$14,469.00 for the additional seven percent impairment. She thus received an overpayment of compensation in the amount of \$6,285.36.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act 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.⁶ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁷

³ 5 U.S.C. § 8108.

⁴ The Board notes that the Office properly reduced appellant’s schedule award for the right upper extremity by the amount of previous awards. Finding that appellant had a 41 percent impairment, the Office granted an additional schedule award for a 28 percent impairment (41 percent minus 13 percent, the total of previous schedule awards for right upper extremity impairment).

⁵ See *supra* note 3.

⁶ 5 U.S.C. § 8129.

⁷ 20 C.F.R. § 10.434.

Section 10.436 of the implementing federal regulations provide that recovery of an overpayment will defeat the purpose of the Act if recovery would cause undue hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses and outlines the specific financial circumstances under which recovery may be considered to defeat the purpose of the Act.⁸

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁹

5 U.S.C. § 8124(a) provides that the Office shall determine and make a finding of facts and make an award for or against payment of compensation.¹⁰ The Office's regulations provide that an Office decision shall contain findings of fact and a statement of reasons.¹¹ Its decision should contain a discussion of the issues, requirements for entitlement, a background framework so that the reader can understand the issues at hand, a discussion of the relevant evidence, a basis for the decision and a conclusion.¹² Office procedures further specify that a final decision must provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would overcome it.¹³ Thus, a final decision must include findings of fact and a description of the basis for the findings so that the parties of interest will have a clear understanding of the reasoning behind the decision.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that the Office's February 29, 2008 decision lacks sufficient reasoning to explain the basis for its denial of appellant's request for waiver. Therefore, the case must be remanded to the Office for an appropriate decision and further development as deemed necessary by the Office.

The Office made a preliminary determination that appellant was without fault in creating the overpayment. Appellant submitted detailed information regarding her income and expenses, as well as financial documents supporting her request for waiver. The Office held a telephone conference on February 5, 2008 and obtained additional financial information. However, in its February 29, 2008 decision finalizing the overpayment of compensation and denying waiver, the

⁸ *Id.* at § 10.436.

⁹ *Id.* at § 10.437.

¹⁰ 5 U.S.C. § 8124.

¹¹ 20 C.F.R. § 10.126.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997).

¹³ *Id.*

¹⁴ *Paul M. Colosi*, 56 ECAB 294 (2005).

Office concluded, without explanation, that the information provided by appellant was not sufficient to establish waiver.

Although the Office acknowledged that appellant had submitted a bank statement, mortgage statement, tax forms and a statement of monthly expenses, it stated inaccurately that she “did not provide any supporting documentation to support [her itemized] expenses.” Without discussing appellant’s income and expenses, including her representation that her expenses exceeded her income or any of the evidence submitted in support of her request for waiver, the Office found that she had not provided information to support a finding that the recovery would defeat the purpose of the Act or be against equity and good conscience. The Office is required to make findings of fact and a statement of reasons regarding the material facts of the case¹⁵ and to provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁶ Its finding in its February 29, 2008 decision is not sufficiently detailed so that appellant or the Board can understand the reasoning behind the denial of her request for waiver.¹⁷ The case is, therefore, remanded to the Office for an appropriate determination with adequate findings and reasoning regarding whether appellant has established entitlement to waiver of the overpayment.¹⁸

CONCLUSION

The Board finds that appellant received an overpayment of \$6,285.36 because she received schedule award compensation which duplicated compensation previously received. The Board further finds that the case is not in posture for decision regarding whether the Office properly denied waiver of the overpayment.

¹⁵ See *supra* note 11; *Beverly Dukes*, 46 ECAB 1014 (1995).

¹⁶ *Id.*

¹⁷ See *Paul M. Colosi*, *supra* note 14.

¹⁸ In light of the Board’s ruling on the second issue, the third issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 29, 2008 is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 21, 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