

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

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M.C., Appellant )  
and )  
DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Los Angeles, CA, Employer )  

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**Docket No. 09-1252**  
**Issued: February 1, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 16, 2009 appellant, through counsel, filed a timely appeal from a March 18, 2009 decision of the Office of Workers' Compensation Programs finding an overpayment of compensation in the amount of \$2,631.13. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment of compensation in the amount of \$2,631.13 for the period November 10 through 22, 2008; and (2) whether the Office properly denied waiver of recovery of the overpayment.

**FACTUAL HISTORY**

On April 8, 2002 appellant, then a 53-year-old registered nurse, filed an occupational disease claim for right hand/wrist carpal tunnel syndrome and right shoulder severe tendinitis.

The Office accepted that she sustained right wrist sprain, right carpal tunnel syndrome and right shoulder strain and rotator cuff tear as a result of her employment.<sup>1</sup> Appellant underwent right shoulder surgery on August 30, 2007 and subsequently elected to receive wage-loss compensation beginning August 30, 2007.

The record reflects that appellant received disability compensation of \$5,253.15 every 28 days through November 22, 2008 by direct deposit. On November 10, 2008 she returned to work in a limited-duty, full-time permanent position as a telephonic nurse case manager at the employing establishment.

In a letter dated January 6, 2009, the Office made a preliminary determination that an overpayment of \$2,631.13 had been created from November 10 to 22, 2008. Appellant received \$5,253.15 compensation for the period October 26 to November 22, 2008, but should only have received \$2,622.02 in compensation from October 26 to November 9, 2008 as she returned to work on November 10, 2008. She was overpaid \$2,631.13. The Office found that appellant was not at fault in creating the overpayment. Appellant was advised to submit an OWCP-20 overpayment recovery questionnaire form and supporting financial documents so that the Office could consider the issue of waiver of the overpayment.<sup>2</sup> No additional information was submitted by appellant regarding the overpayment.

By decision dated March 18, 2009, the Office finalized its determination that appellant received an overpayment of \$2,631.13 from November 10 to 22, 2008. It denied waiver of the overpayment on the grounds that appellant had not responded to the request for financial information.

### **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, she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>3</sup> Office regulations provide that compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the

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<sup>1</sup> Appellant has several other claims. Under case number xxxxxx681, date of injury, May 22, 2003, the Office accepted a strain to the right hand, elbow, shoulder and tendinitis of right shoulder and hand due to a patient pulling her to the ground. This claim had been doubled into the present claim. Under case number xxxxxx814, date of injury, February 15, 2002, the Office denied appellant's claim for stress.

<sup>2</sup> By decision dated January 6, 2009, the Office denied authorization for reimbursement for home health attendant care. By decision dated January 15, 2009, it found appellant's employment effective November 10, 2008 fairly and reasonably represented her wage-earning capacity and that she had no loss of wage-earning capacity. Appellant did not appeal these decisions.

<sup>3</sup> 5 U.S.C. § 8116(a).

work-related injury.<sup>4</sup> An employee is not entitled to compensation for total disability after returning to full-time work.<sup>5</sup>

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

Appellant does not contest that an overpayment of compensation was created. The record establishes that she returned to full-time limited-duty work on November 10, 2008 at her regular salary. She received wage-loss compensation through November 22, 2008. As noted, compensation for wage loss is payable only for those periods when a claimant's employment-related condition prevents her from earning her date-of-injury wages. Appellant received a compensation payment covering the period October 26 to November 22, 2008. She was entitled to wage-loss compensation only from October 26 to November 9, 2008. An overpayment of compensation was created.

As to the amount of the overpayment, the Office found that appellant had received \$5,253.15 in compensation from October 26 to November 22, 2008, but should have received \$2,622.02 from October 26 to November 9, 2008. Subtracting \$2,622.02 from \$5,253.15 yields \$2,631.13 which is the amount of the overpayment of compensation that was created on this case.

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

Section 8129(b) of the Act provides that 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.<sup>6</sup> If a claimant is without fault in the creation of an overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience.<sup>7</sup>

With respect to a claimant's obligations to submit financial information, the Office regulations provide that 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 the 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. Failure to submit the requested information

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<sup>4</sup> 20 C.F.R. § 10.500.

<sup>5</sup> *M.J.*, 60 ECAB \_\_\_\_ (Docket No. 09-469, issued August 24, 2009).

<sup>6</sup> 5 U.S.C. § 8129(b).

<sup>7</sup> See 20 C.F.R. § 10.434. See also 20 C.F.R. § 10.436 (notes circumstances under which recovery of an overpayment would defeat the purpose of the Act); 20 C.F.R. § 10.437 (notes circumstances under which recovery of an overpayment would be against equity and good conscience).

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>8</sup>

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

In its January 6, 2009 preliminary overpayment determination, the Office informed appellant that she was not at fault in creating the overpayment and steps to take if she believed that she should sought a waiver of the overpayment. It advised her to submit a completed overpayment recovery questionnaire, as well as information and evidence regarding her income and expenses, within 30 days.

Appellant did not respond. She did not submit any overpayment recovery questionnaire form prior to the issuance of the Office's final decision nor financial information outlining her income and expenses. As appellant failed to submit the requested information, as required by section 10.438 of its regulations, she is not entitled to a waiver.<sup>9</sup> The Board finds that the Office properly denied waiver of the overpayment.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment in the amount of \$2,631.13 from November 10 to 22, 2008. The Board further finds that the Office properly denied waiver of the overpayment.

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<sup>8</sup> *Id.* at § 10.438.

<sup>9</sup> *See T.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-1604, issued March 13, 2009).

<sup>10</sup> The Board notes that it does not have jurisdiction over repayment of the overpayment as the Office did not direct repayment from continuing compensation. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. *See Judith A. Cariddo*, 55 ECAB 348 (2004). *See also Rose Carye*, 50 ECAB 482, 487 (1999); *Lewis George*, 45 ECAB 144 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 18, 2009 is affirmed.

Issued: February 1, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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