

FACTUAL HISTORY

On April 15, 2008 appellant, then a 56-year-old instructional systems specialist, sustained employment-related contusions of multiple sites and a right wrist sprain when she fell on an uneven sidewalk at work. She stopped work that day, was placed on the periodic rolls and received compensation payments by check. Appellant returned to full-time limited duty on November 12, 2008. She received and endorsed one additional compensation check in the amount of \$3,123.07, covering the period October 26 to November 22, 2008.

By letter dated December 11, 2008, the Office issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$1,226.92 for the period November 12 through 22, 2008 because she continued to receive disability compensation during a period in which she had returned to work. It found appellant at fault in the creation of the overpayment because she should have known she was not entitled to wage-loss compensation after her return to work. Appellant was provided an overpayment action request form and an overpayment questionnaire. On December 19, 2008 she called the Office to inquire about setting up a repayment plan.

On January 12, 2009 the Office finalized the preliminary determination that appellant was at fault in creating the \$1,226.92 overpayment because she continued to receive wage-loss compensation after her return to work.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act² 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 her duty.³ Section 8116 of the 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 or she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.⁴ Section 10.500 of the Office's 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 work-related injury."⁵ Office procedures provide that an overpayment in compensation is created when a claimant returns to work and continues to receive compensation.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

⁵ 20 C.F.R. § 10.500.

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation in the amount of \$1,226.92. The record supports that she returned to work on November 12, 2008 and continued to receive wage-loss compensation through November 22, 2008. As noted, both the Act and Office implementing federal regulations provide that a claimant may not receive wage-loss compensation concurrently with a federal salary.⁷ A copy of an endorsed check shows that appellant received and deposited compensation totaling \$3,123.07 for the period October 26 to November 22, 2008, and an overpayment worksheet indicates that appellant was entitled to compensation of \$1,896.15 for the period October 26 through November 11, 2008, yielding an overpayment in compensation in the amount of \$1,226.92 for the period November 12 through 22, 2008.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office 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.”⁸

Section 10.433(a) of the Office’s regulations provides:

“[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 receives 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 in 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;
- (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).”⁹

In determining whether a claimant is at fault in creating an overpayment, the Office will consider the circumstances surrounding the overpayment. The degree of care expected by a

⁷ 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

⁸ 5 *Id.* at § 8129; *see Joan Ross*, 57 ECAB 694 (2006).

⁹ 20 C.F.R. § 10.433; *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

recipient of compensation may vary with the complexity of the circumstances and the individual's capacity to realize that he or she is being overpaid.¹⁰

ANALYSIS -- ISSUE 2

The Office found that appellant was at fault in creating the overpayment because she knew or should have known she was not entitled to wage-loss compensation for the period November 12 through 22, 2008 when she also worked. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives are proper¹¹ and the recipient must show good faith and exercise a high degree of care in reporting events that may affect entitlement to or the amount of benefits.¹²

On appeal, appellant disputes the fault finding that she knew or should have known that she was not entitled to the compensation. However, in a June 16, 2008 letter, in which the Office notified her that her claim was accepted and in a June 27, 2008 letter, when the Office notified her that she was placed on the periodic rolls, the Office clearly advised her that she was to immediately inform the Office upon her return to work to avoid an overpayment in compensation and that, if she worked during any period covered by a compensation payment, she had to return the payment to the Office. Under these circumstances, appellant should have known that she could not receive wage-loss compensation during any period that she worked.¹³ While the Office was notified that appellant returned to work on November 12, 2008, she did not return the compensation she received by check for the period October 26 through November 22, 2008. The Board finds that she should have known at the time she returned to work that she was not entitled to concurrently receive wage-loss compensation and had an obligation to return a payment that she knew or should have known was incorrect.¹⁴ Under section 10.433(a) of the Office's regulations, appellant is at fault and is not entitled to waiver of the overpayment in compensation.¹⁵

With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation payments under the Act.¹⁶

CONCLUSION

The Board finds that the Office properly found appellant at fault in the creation of an overpayment in compensation in the amount of \$1,226.92 for the period November 12

¹⁰ *Id.* at § 10.433(b); see *Neill D. Dewald*, 57 ECAB 451 (2006).

¹¹ *Danny E. Haley*, *supra* note 4.

¹² *Sinclair L. Taylor*, *supra* note 9.

¹³ *Neill D. Dewald*, *supra* note 10.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *L.D.*, 59 ECAB ____ (Docket No. 08-678, issued August 7, 2008).

through 22, 2008 because she continued to receive wage-loss compensation after her return to work. As appellant was at fault, she was not entitled to waiver.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2009 be affirmed.

Issued: January 21, 2010
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