

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

T.A., Appellant

and

**DEPARTMENT OF ENERGY, BONNEVILLE
POWER ADMINISTRATION, Portland, OR,
Employer**

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**Docket No. 09-1421
Issued: January 19, 2010**

Appearances:
Appellant, pro se
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 May 19, 2009 appellant filed a timely appeal from the May 6, 2009 merit decision of the Office of Workers' Compensation Programs, regarding an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the May 6, 2009 decision.

ISSUES

The issues are: (1) whether the Office properly determined that an overpayment of \$1,132.93 was created; and (2) whether it properly found that appellant was at fault in creating the overpayment.

FACTUAL HISTORY

On August 5, 2004 appellant, then a 35-year-old electrical apprentice, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left arm injury when he fell while in the performance of duty on August 4, 2004. The accepted conditions for the left arm are: sprain of

hand and wrist; open wound of finger without complications; contusion of hand; open fracture of metacarpal bone; pain in forearm joint; other forearm joint derangement; and chronic forearm osteomyelitis.

Appellant did not initially stop work. On October 14, 2004 he filed a claim for compensation (Form CA-7) for the period October 5 to 16, 2004. The time analysis form showed that appellant was off work from October 5 to 15, 2004. A November 5, 2004 Office memorandum indicated that appellant had returned to full-time light duty, was in an internship program and wanted the compensation payment for October 5 to 15, 2004 as soon as possible.

On November 16, 2004 the Office issued an electronic transfer payment to appellant's bank account for \$1,132.93 for the period October 5 to 15, 2004. On July 1, 2005 the Office issued a payment sent to appellant's home address for \$1,132.93. The payment indicated that the compensation period covered was October 5 to 15, 2004. By letter dated September 12, 2005, the Office advised appellant that the July 1, 2005 payment was a duplicate payment and he should return it. Appellant responded in an October 1, 2005 letter that he had received only one check in July.

By letter dated August 22, 2008, the Office made a preliminary determination that appellant received an overpayment of \$1,132.93 from October 5 to 15, 2004. It found that appellant was at fault in creating the overpayment, as he knew or should have known the July 1, 2005 payment was incorrect.

Appellant requested a preresoupment hearing with an Office hearing representative, which was held on January 15, 2009.

In a decision dated May 6, 2009, the hearing representative finalized the overpayment determination. The hearing representative found an overpayment of \$1,132.93 was created and that appellant was at fault in creating the overpayment as he accepted a payment he should have known to be incorrect.

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.¹ When a claimant receives a duplicative compensation payment for a period that he has already received compensation for wage loss, an overpayment of compensation is created.²

¹ 5 U.S.C. § 8116(a).

² See *Lawrence J. Dubuque*, 55 ECAB 667 (2004).

ANALYSIS -- ISSUE 1

The record establishes that appellant received a payment of \$1,132.93 in November 2004 representing compensation from October 5 to 15, 2004. By payment dated July 1, 2005, the Office issued another payment of \$1,132.93 for the same period. As noted, when a claimant receives a duplicative compensation payment for a period he has already received wage-loss benefits, an overpayment is created. The Board finds that an overpayment of \$1,132.93 was created in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act³ 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.”⁴ Waiver of an overpayment is not permitted unless the claimant is “without fault” in creating the overpayment.⁵

On the issue of fault, 20 C.F.R. § 10.433 provides that an individual will be found at fault if he or she has done any of the following: “(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 was incorrect.”

ANALYSIS -- ISSUE 2

The Office based its determination of fault under 20 C.F.R. § 10.433(3), finding that appellant accepted a payment he knew or should have known to be incorrect. The evidence supports the Office’s finding in this case. Appellant was only entitled to compensation for wage loss from October 5 to 15, 2004. He requested that the Office provide him a payment as soon as possible. Appellant received a direct deposit payment of \$1,132.93 in November 2004. The July 1, 2005 compensation check clearly noted that it was wage loss for the period October 5 to 15, 2004. Appellant knew or should have known this was an incorrect payment. He had already received compensation for that period and there was no reasonable basis for him to believe any additional wage-loss compensation was warranted.

On appeal, appellant contends that there was no finding of any overpayment for “months and months” and the Office failed to prove that he had any reason to believe an overpayment was created. The basis for the fault determination in this case was in accepting a payment the claimant knew or should have known to be incorrect. The evidence of record clearly meets that standard. Appellant should have known the July 1, 2005 payment was incorrect as he had already received wage-loss compensation of \$1,132.93 for the period October 5 to 15, 2004. The

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8129(b).

⁵ *Norman F. Bligh*, 41 ECAB 230 (1989).

Office properly found appellant was not “without fault” in creating the overpayment and is not entitled to waiver.

CONCLUSION

The Board finds an overpayment of \$1,132.93 was created and appellant was at fault in creating the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated May 6, 2009 is affirmed.

Issued: January 19, 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