

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

C.W., Appellant

and

U.S. POSTAL SERVICE, ROSEMEAD
STATION, Carrollton, TX, Employer

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**Docket No. 10-263
Issued: September 14, 2010**

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 November 10, 2009 appellant filed a timely appeal from a July 14, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issues of this case.

ISSUES

The issues are: (1) whether the Office properly found an overpayment in compensation in the amount of \$1,986.34 for the period September 28 to October 17, 2008 because appellant received duplicate monetary compensation payments for that period; (2) whether the Office properly found that appellant was at fault in the creation of the overpayment and therefore was not eligible for waiver; and (3) whether the Office properly required recovery in full.

On appeal, appellant disagreed with the decision of the Office hearing representative.

FACTUAL HISTORY

On March 14, 2008 appellant, then a 45-year-old city letter carrier, sustained an employment-related sprain of the thoracic spine and contusions to the right elbow and right chest

wall when she slipped on a ramp and was struck by a gondola. She stopped work that day and was placed on the compensation periodic rolls beginning April 29, 2008. On June 30, 2008 an attending family physician, Dr. Fernando Mallou, advised that appellant remained disabled. The Office referred her to Dr. Robert E. Holladay, IV, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 24, 2008 report, Dr. Holladay advised that appellant could return to modified duty for four hours a day. In an August 4, 2008 functional capacity evaluation report, Dr. Phillip Osborne, a specialist in occupational medicine, advised that the study was probably not her best effort but that she could certainly do any job in a sedentary to light category. On August 6, 2008 Dr. Mallou agreed with Dr. Holladay's recommendations that appellant could return to part-time work. On August 20, 2008 the employing establishment offered her a modified city letter carrier position that she declined.

In a November 3, 2008 decision, the Office terminated appellant's monetary compensation benefits on the grounds that she refused to accept suitable work.¹

By check dated October 24, 2008, appellant was paid compensation in the amount of \$1,986.34 for the period September 28 to October 19, 2008. On October 25, 2008 she was paid compensation by check in the amount of \$2,528.07 for the period September 28 to October 25, 2008. The record contains copies of both checks, endorsed by appellant. Appellant returned to a modified carrier position for four hours a day on November 4, 2008. She began receiving compensation for four hours a day.

On January 8, 2009 the Office issued a preliminary determination that appellant had received an overpayment in compensation in the amount of \$1,986.34 for the period September 28 to October 19, 2008 because she received a periodic rolls payment and a supplementary payment for the period in question, which duplicate compensation. It found her at fault because she should have known that she was not entitled to receive duplicate compensation. Appellant was given 30 days to respond and was provided an overpayment action request form and an overpayment questionnaire. On February 7, 2009 she requested a prerecoupment hearing.

At the hearing held on May 8, 2009, the Office hearing representative explained that a computer error generated the duplicate payment. Appellant disagreed that she received an overpayment and argued that, if extra monies were sent to her, it was not her fault. The hearing representative informed her that it was her responsibility to provide financial information, even if she was found without fault and advised her that she needed to complete an overpayment questionnaire. Appellant was given 30 days to submit further information.² In a June 21, 2009 letter, she described her concerns regarding how her case had been handled by the Office and the conduct of the hearing.

¹ In letters dated August 21 and October 7, 2008, the Office informed appellant that the offered position was suitable. On September 10, 2008 appellant signed that she accepted the offer, but amendments were written in. She did not return to work.

² On August 6, 2009 the Office proposed to terminate appellant's wage-loss and compensation benefits, based on his opinion that she could return to full duty and by decision dated October 15, 2009, the Office finalized the termination. Appellant did not file an appeal of this decision with the Board.

By decision dated July 14, 2009, an Office hearing representative finalized the finding that an overpayment in compensation in the amount of \$1,986.34 had been created for the period September 28 to October 17, 2008 for which appellant was at fault. Because she did not provide any financial documentation regarding her income and expenses, the overpayment was to be repaid in full.³

LEGAL PRECEDENT -- ISSUE 1

Section 8116 of the Federal Employees' Compensation Act⁴ 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.⁵ When a claimant receives a duplicative compensation payment for a period that he or she has already received compensation for wage loss, an overpayment in compensation is created.⁶

ANALYSIS -- ISSUE 1

The record reflects that appellant received duplicate compensation payments for the period September 28 to October 19, 2008. A check in the amount of \$1,986.34 dated October 24, 2008, endorsed by her, contained a notation that it was payment of compensation for the period September 28 to October 19, 2008. A second check, dated October 25, 2008 in the amount of \$2,528.07, was also endorsed by appellant and issued as payment covering the same compensation period as the October 24, 2008 check. The Office advised that the October 24, 2008 check was improperly generated as a supplemental payment and that she already received payment for the period in question under the periodic rolls system, the October 25, 2008 check. There is nothing in the record to establish that appellant was due other compensation for the period September 28 to October 19, 2008. The Board finds that she received an overpayment in compensation in the amount of \$1,986.34.

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."⁷

³ The hearing representative noted that by decision dated November 3, 2008 appellant's monetary compensation was terminated effective October 26, 2008 for refusing a suitable job offer yet the Office continued to pay compensation for four hours a day wage loss.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8116(a).

⁶ *See Lawrence J. Dubuque*, 55 ECAB 667 (2004).

⁷ 5 U.S.C. § 8129; *see Joan Ross*, 57 ECAB 694 (2006).

Section 10.433(a) of the Office's regulations provide that the Office:

“[M]ay 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).”⁸

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 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.⁹

ANALYSIS -- ISSUE 2

The Office found appellant at fault in creating the \$1,986.34 overpayment because she knew or should have known that the duplicate wage-loss compensation for the period September 28 to October 19, 2008, was incorrect.

Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives are proper.¹⁰ 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.¹¹ In an April 16, 2008 letter, the Office clearly advised appellant that she could be penalized for knowingly accepting compensation to which she was not entitled. In a June 9, 2008 letter, it notified her that she was placed on the periodic rolls and that each payment would show the period for which payment was made. The checks from the Office dated October 24 and 25, 2008, clearly listed the period of compensation covered. Each compensation check was accompanied by statements which specifically identified the periods covered by the payments. When appellant received duplicate payment by check for the period September 29 to October 19, 2008, she had no reasonable basis to believe that she was entitled to such extra monies. The Board finds that she knew or should have known that the payments she received were incorrect. Appellant had an obligation to return a payment that she knew or should have known to be

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

⁹ *Id.* at § 10.433(b); *see Neill D. Dewald*, 57 ECAB 451 (2006).

¹⁰ *Danny E. Haley*, 56 ECAB 393 (2005).

¹¹ *Sinclair L. Taylor*, *supra* note 8.

incorrect.¹² Under section 10.433(a) of the Office's regulations, she is at fault in creation of the overpayment.¹³

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of the Office's regulations provide that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.¹⁴

ANALYSIS -- ISSUE 3

Appellant did not submit any overpayment recovery questionnaire or other financial information that the Office requested prior to the final July 14, 2009 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.¹⁵ When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁶ In the July 14, 2009 decision, the Office hearing representative found the entire amount of the overpayment, \$1,986.34, payable because appellant submitted no financial information. As appellant did not submit any financial information to the Office as requested, the Board finds that the hearing representative considered all relevant factors and properly requirement repayment of the \$1,986.34 overpayment.

CONCLUSION

The Board finds that appellant was at fault in the creation of an overpayment in compensation in the amount of \$1,986.34 and that the Office permissibly required that the overpayment be paid in full.

¹² *Id.*

¹³ 5 U.S.C. § 8129; 20 C.F.R. § 10.433(a).

¹⁴ 20 C.F.R. § 10.441.

¹⁵ *Id.* at §10.438.

¹⁶ See *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2010
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