

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP M. CONNOR and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 98-893; Submitted on the Record;
Issued February 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$510.25 for the period December 2, 1996 through May 30, 1997; and (2) whether the Office properly determined that appellant was not without fault in the creation of the overpayment.

On August 27, 1990 appellant, a 31-year-old tractor trailer driver, injured his upper and lower back while lifting a bundle of mail. He filed a claim for benefits on September 7, 1990, which the Office accepted for back strain by letter dated October 30, 1990. The Office commenced payment for temporary total disability and paid appellant compensation for appropriate periods. Appellant was placed on the periodic rolls. He returned to work on July 6, 1991 in a limited-duty capacity and sustained another work injury on August 11, 1991, which the Office accepted for lumbosacral strain. The Office paid appellant compensation for total disability until May 2, 1992, when he returned to limited duty for four hours per day. On April 3, 1993 the employing establishment terminated appellant's limited-duty job because it could no longer accommodate his physical restrictions.

Appellant filed a claim for recurrence of disability on April 10, 1997, which the Office accepted by letter dated April 14, 1997.

By letter dated November 8, 1997, the Office advised appellant that it had made a preliminary determination that an overpayment of compensation had occurred in the amount of \$510.25, covering the period December 2, 1996 through May 30, 1997. The Office stated that the overpayment had occurred when appellant completed three travel vouchers for this period in an incorrect manner by claiming reimbursement in a dollar amount equal to the number of miles he traveled, instead of claiming reimbursement based on the required formula of 31 cents per mile. The Office stated that a reasonable person would have known that the blank space on the form preceded by the words "amount claimed" next to a dollar sign was indicative of a reimbursement request based on the required formula, not the number of miles traveled. The

Office, therefore, concluded that appellant made deliberate and intentional misstatements and found that he was at fault in creating the overpayment because he made incorrect statements, which he knew or should have known to be material. The Office informed appellant that if he disagreed with the decision he could, within 30 days, submit evidence or argument to the Office, or request a precoupment hearing with the Branch of Hearings and Review.

In his response to the overpayment notice, appellant stated on the recovery questionnaire form that he was paid for only one month, December, in the entire year of 1996 and that he believed the Office still owed him compensation from January through November 1996. Appellant further indicated that the Office “lost” the travel vouchers the first two times he submitted them and that he had to wait a year and three months to receive due compensation.

By decision dated January 5, 1998, the Office found that appellant was at fault in creating the overpayment of compensation for the period December 2, 1996 through May 30, 1997, which amounted to a total overpayment of \$510.25.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$510.25 for the period December 2, 1996 through May 30, 1997. The record shows that, in a letter to appellant dated September 26, 1996, the Office advised appellant that he needed to use a Form SF-1012 to claim reimbursement under the Federal Employees’ Compensation Act for reasonable and necessary travel expenses in order to obtain medical care due to the work injury and indicated that the travel rate effective June 7, 1996 was 31 cents per mile. In an Office worksheet dated November 5, 1997, the Office determined that, in travel vouchers covering the periods for December 2, 1996, February 25 to April 21, 1997 and April 28 to May 30, 1997, appellant had calculated the amount of his reimbursement request on a mile-per-dollar basis, as opposed to 31 cents per mile and that because of this miscalculation an overpayment had occurred in the amount of \$510.25. Based on the findings contained in this worksheet, the Board finds that the Office properly determined that appellant received an overpayment in the amount of \$510.25 for the period December 2, 1996 through May 30, 1997.

The Board further finds that the Office properly determined that appellant was not without fault in the creation of the overpayment.

Section 8129(a) of the Act¹ provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation, which meets the test set forth as follows in section 8129(b): “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

¹ 5 U.S.C. §§ 8101-8193.

would be against equity and good conscience.”² If an employee is not “without fault” the overpayment is not subject to waiver.³

In determining whether an individual is “without fault” what constitutes “fault” must first be determined. The Office will consider all pertinent circumstances including age, intelligence, education and physical and mental condition. An individual is with fault in the creation of an overpayment if he:

“(1) Made an incorrect statement as to a material fact, which the individual knew or should have known to be incorrect; or

“(2) Failed to furnish information, which the individual knew or should have known to be material; or

“(3) With respect to the overpaid individual only, accepted a payment which, the individual knew or should have been expected to know was incorrect.”⁴

In this case, the Office applied the first standard in determining that appellant was at fault in creating the overpayment. The record shows that the Office advised appellant in its September 26, 1996 letter that the rate for reimbursement of travel expenses incurred in obtaining reasonable and necessary travel medical care was 31 cents per mile. In its memorandum accompanying the January 5, 1998 overpayment decision, the Office stated that the dollar sign located on the front of the travel voucher form next to the statement “amount claimed” provided a clear indication that the space was not designed to record the total miles traveled, as appellant did, but to record the dollar amount of reimbursement he was claiming. In fact, as the Office noted, the space for recording the total miles traveled was clearly designated on the back of the voucher form. This misstatement by appellant resulted in him being paid in dollars based on the amount of miles he claimed and in the overpayment of compensation. Moreover, in his response to the overpayment questionnaire, appellant did not deny that he misstated the amount for which he was claiming reimbursement of travel expenses. Rather, he asserted that the Office actually owed him money, because it had failed to pay him due compensation. Based on this record, taken as a whole, the Office properly found that appellant knew or should have known that he was making an incorrect statement as to a material fact.⁵ Therefore, the Office properly determined that appellant was not without fault in the creation of the overpayment and was therefore not entitled to request waiver of recovery of the overpayment of compensation.

For these reasons, the Board finds that, under the circumstances of this case, the Office properly found that appellant reasonably knew or should have known that the amount he

² 5 U.S.C. § 8129.

³ *Stephen A. Hund*, 47 ECAB 432 (1996).

⁴ 20 C.F.R. § 10.320(b).

⁵ *See Hund*, *supra* note 3.

requested for reimbursement of travel expenses in three travel vouchers covering the period December 2, 1996 through May 30, 1997, which contained an overpayment in the amount of \$510.25, was in error. As appellant was not without fault under the first standard outlined above, recovery of the overpayment of compensation in the amount of \$510.25 may not be waived. Thus, the Office's January 5, 1998 decision is affirmed.

The decision of the Office of Workers' Compensation Programs dated January 5, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 4, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member