



## **FACTUAL HISTORY**

On March 3, 2003 appellant, then a 45-year-old radiology technician, filed an occupational disease claim alleging that on January 21, 2003 he became aware of his right shoulder blade pain with numbness and pain down his right shoulder, arm and fingers. He attributed his hand condition to factors of his federal employment, which included repeatedly carrying cassettes. By letter dated September 2, 2003, the Office accepted appellant's claim for displacement of a herniated disc at C6-7 and authorized surgery based on an August 26, 2003 medical report of Dr. Hendrick J. Arnold, a Board-certified orthopedic surgeon and Office referral physician.

By letter dated July 16, 2004, the Office advised appellant that he had incorrectly calculated \$484.62 for expenses associated with his travel to the second opinion medical examination performed by Dr. Arnold.<sup>1</sup> The Office noted that this figure included \$146.20 for mileage based on 515.2 miles traveled at 28 cents per mile, \$254.67 for 13 hours of wage loss based on 13 hours at \$19.59 per hour, and \$18.25 for meals and \$65.50 for fuel. The Office, however, found that appellant was entitled to reimbursement in the amount of \$203.72. The Office calculated \$185.47 for mileage based on 515.2 miles traveled at 36 cents per mile and \$18.25 for meals. The Office noted that actual fuel expenses were not reimbursable and loss of wages must be claimed by filing a claim for compensation (Form CA-7) for actual time lost from work, which was 8 hours and not 13 hours. The Office advised appellant that, due to an administrative processing error, he was grossly overpaid and received payment for his travel claim in the amount of \$3,279.98. The Office deducted \$203.72 from \$3,279.98 and found that an overpayment was created in the amount of \$3,076.26. The Office requested that appellant submit payment in full.

By letter dated August 13, 2004, the Office informed appellant that it had made a preliminary finding that he had been overpaid compensation benefits in the amount of \$3,076.26. The Office found that the overpayment occurred because he received \$3,279.98 for a travel claim while he was entitled to \$203.72. The Office found that he was at fault in the creation of the overpayment. Appellant was advised that he could request a telephone conference, a final decision based on the written evidence only or a hearing within 30 days if he disagreed that the overpayment occurred, with the amount of the overpayment or if he believed that recovery of the overpayment should be waived. The Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof within 30 days.

In a response dated September 13, 2004, appellant contended that he was not at fault in the creation of the overpayment because he and his wife arrived at the original amount of the reimbursement, \$484.62 in good faith with assistance from the Office. Appellant explained that he did receive a check in the amount of \$3,279.98 and it was unclear as to how the finance office came up with this figure. Appellant suspected that this amount had been combined with other reimbursements to which he was entitled to but had not yet received. He noted that the check arrived at a good time as his bills were stacked up due to the slow nature of approving his claim.

---

<sup>1</sup> The Board notes that appellant's travel voucher is not contained in the record.

He contended that he had no fraudulent intent in accepting the payment. Appellant advised the Office that he was willing to repay the overpayment but he could not do so in full at that time because it would place a tremendous burden on his family.

By decision dated September 28, 2004, the Office finalized the preliminary determination regarding the fact of overpayment and the amount of the overpayment. The Office also finalized its preliminary finding of fault on the grounds that there was no evidence to support appellant's entitlement to \$3,076.26 and he knew or should have known that he was not entitled to the payment. The Office directed appellant to repay the overpayment in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation. The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as the Secretary considers necessary and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies."<sup>2</sup> Section 8123(b) of the Act provides that an employee is entitled to be paid expenses incident to an examination required by the Secretary, which in the opinion of the Secretary are necessary and reasonable, including transportation and loss of wages incurred in order to be examined.<sup>3</sup>

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

Appellant requested reimbursement in the amount of \$484.62 for travel expenses incurred to undergo a second opinion medical examination by Dr. Arnold, an Office referral physician. The Office reimbursed him in the amount of \$3,279.98 which he did not dispute. The Office determined that appellant was only entitled to reimbursement in the amount of \$203.72. In computing the \$203.72, the Office noted that appellant had spent \$185.47 for mileage based on 515.2 miles traveled at 36 cents per mile and had also spent \$18.25 for meals. An overpayment was created because appellant received a reimbursement greater than the amount he was entitled to receive. The Office deducted \$203.72 from \$3,279.98, leaving a remaining balance of \$3,076.26. The Board finds that appellant received an overpayment in the amount of \$3,076.26.

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

Section 8129(b) of the Federal Employees' Compensation Act<sup>4</sup> provides that an overpayment of compensation shall be recovered by the Office unless "incorrect payment has

---

<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> 5 U.S.C. § 8123(b); *see Gaare R. Davis*, 48 ECAB 612 (1997).

<sup>4</sup> 5 U.S.C. § 8129(b).

been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Federal Employees' Compensation Act] or would be against equity and good conscience.”<sup>5</sup> Thus, the Office may not waive the overpayment of compensation unless appellant was without fault.<sup>6</sup> Adjustment or recovery must, therefore, be made when an incorrect payment has been made to an individual who is with fault.<sup>7</sup>

On the issue of fault, section 10.433 of the Office's regulations, 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.”<sup>8</sup>

With respect to whether an individual is without fault, section 10.433(b) of the Office's regulations provides in relevant part:

“Whether or not [the Office] determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.”<sup>9</sup>

### ANALYSIS -- ISSUE 2

The Office found that appellant accepted a payment which he knew or should have known to be incorrect in making its determination that he was at fault in creating the \$3,076.26 overpayment. Appellant submitted a voucher seeking reimbursement in the amount of \$484.62 for expenses related to his travel to a medical examination by Dr. Arnold. He received a reimbursement from the Office in the amount of \$3,279.98. Appellant explained that he thought that the \$3,279.98 reimbursement check included other reimbursements to which he was entitled to but had not yet received. However, the amount of the check he received from the Office differs substantially from the \$482.62 he requested. The Board finds that appellant knew or should have known that the payment he received from the Office was incorrect. Under these

---

<sup>5</sup> *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

<sup>6</sup> *Norman F. Bligh*, 41 ECAB 230 (1989).

<sup>7</sup> *Diana L. Booth*, 52 ECAB 370, 373 (2001); *William G. Norton, Jr.*, 45 ECAB 630, 639 (1994).

<sup>8</sup> 20 C.F.R. § 10.433(a).

<sup>9</sup> *Id.* at § 10.433(b).

circumstances, the Board finds that the Office properly found that appellant was at fault in the creation of the overpayment and, therefore, he is not eligible for waiver of the overpayment.<sup>10</sup>

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$3,076.26. The Board further finds that the Office properly found that appellant was at fault in the creation of the overpayment and, therefore, it was ineligible for waiver of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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

---

<sup>10</sup> In the present case, the Office is not seeking recovery from continuing compensation benefits. The Board notes that it does not have jurisdiction under the Debt Collection Act, 5 U.S.C. § 5511 *et seq.*, to consider the matter of recovery of an overpayment against the assets of the salary of an employee. *See Beverly E. Labbe*, 50 ECAB 440, 443 (1999); *Levon H. Knight*, 40 ECAB 658 (1989). The Board's jurisdiction is limited to instances in which recovery is sought against continuing compensation benefits under the Federal Employees' Compensation Act. *Id.* Therefore, the Board does not have jurisdiction over the method of recovery of the overpayment in the present case.