

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

_____)
S.P., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, WASHINGTON DULLES)
INTERNATIONAL AIRPORT, Dulles, VA,)
Employer**)

_____)

**Docket No. 08-1110
Issued: October 17, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 24, 2007. 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 that an overpayment in compensation in the amount of \$18,054.21 was created for the period July 17, 2006 to May 12, 2007 because appellant continued to receive wage-loss compensation after his return to work; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment and, therefore, the overpayment was not subject to waiver.

FACTUAL HISTORY

On September 18, 2005 appellant, then a 47-year-old transportation security screener, sustained an employment-related sprain/strain of his right rotator cuff while moving a suitcase at work. He received continuation of pay and appropriate compensation. Appellant underwent surgical repair on June 12, 2006 and was placed on the periodic rolls effective June 11, 2006. He returned to full-time light duty on July 17, 2006. However, appellant continued to receive wage-loss compensation until May 16, 2007.

By letter dated June 7, 2007, the Office issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$18,054.21 for the period July 17, 2006 to May 12, 2007 because he received wage-loss compensation after he had returned to work. It found him at fault in the creation of the overpayment because he knew or should have known he was not entitled to wage-loss compensation after his return to work. On June 18, 2007 appellant submitted an overpayment questionnaire and financial information and requested a decision on the written record. He stated that he thought he was entitled to receive wage-loss compensation until April 2007 because he did not recall receiving a “catch-up” payment when his claim was accepted and did not think he returned to work until October 2006.¹ An overpayment worksheet and computer printout show appellant returned to light duty on July 17, 2006 and continued to receive wage-loss compensation, and thus received an overpayment totaling \$18,054.21 for the period July 17, 2006 to May 12, 2007. Additional computer printouts show appellant’s gross compensation for the period. Appellant was instructed to forward the full amount of the overpayment to the Office.

On August 24, 2007 the Office finalized the preliminary determination that appellant was at fault in creating the \$18,054.21 overpayment because he continued to receive wage-loss compensation after his return to work.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees’ Compensation Act 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 his duty.² 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.³ Section 10.500 of the Office’s regulations provides 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

¹ A computer printout shows that on March 2, 2006 appellant was issued a check in the amount of \$4,150.42 for the period November 27, 2005 to February 4, 2006.

² 5 U.S.C. § 8102(a).

³ 5 U.S.C. § 8116(a); *see Danny E. Haley*, 56 ECAB 393 (2005).

injury.”⁴ Office procedures provide that an overpayment in compensation is created when a claimant returns to work and continues to receive compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in compensation. The record supports that he returned to work on July 17, 2006 and received wage-loss compensation through May 15, 2007. As appellant was not entitled to compensation for the period after his return to work, the amount of compensation that he received for the period July 17, 2006 through May 12, 2007 was an overpayment in compensation.⁶

The Board however finds that the case is not in posture for decision regarding the amount of the overpayment. The record before the Board does not contain an explanation of the method used in calculating the overpayment. The record contains an overpayment worksheet and attached computer printout showing an overpayment of \$18,054.21. There are, however, additional computer printouts in the record that show that appellant received compensation from July 17, 2006 through May 12, 2007 of approximately \$18,935.33. As there is insufficient evidence of record regarding how the amount of the overpayment was determined, the Board will remand the case to the Office. It should provide documentation and an explanation regarding the amount of compensation appellant received from July 17, 2006 through May 15, 2007.

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

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

⁴ 20 C.F.R. § 10.500.

⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (September 1994).

⁶ *W.F.*, 57 ECAB ____ (Docket No. 06-769, issued August 11, 2006).

⁷ 5 U.S.C. § 8129; *see Linda E. Padilla*, 45 ECAB 768 (1994).

known to be incorrect; or (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

To determine if an individual was at fault with respect to the creation of an overpayment, the Office examines 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.⁹

ANALYSIS -- ISSUE 2

The Office found that appellant was at fault in creating the overpayment because he knew or should have known he was not entitled to wage-loss compensation for the period beginning July 17, 2006 when he also worked. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives are proper,¹⁰ 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.¹¹

By letter dated January 31, 2006, the Office clearly advised appellant that he was to immediately inform the Office upon his return to work to avoid an overpayment in compensation. If he worked during any period covered by a compensation payment, he was to return the payment to the Office. Under these circumstances, appellant knew or should have known that he could not receive wage-loss compensation during any period that he worked.¹² Appellant returned to work on July 17, 2006 but did not immediately inform the Office or return the compensation received for the period he worked. He acknowledged on the overpayment questionnaire that he thought he had returned to work in October 2006 and was entitled to the compensation he received. However, the evidence establishes that he returned to work on July 17, 2006 and knew or should have known as of that time that he was not entitled to receive wage-loss compensation and had the obligation to return the incorrect payments.¹³

Based on the evidence of record, the Board finds that appellant accepted compensation he knew or should have known was incorrect. Under section 10.433(a) of the Office’s regulations, he is properly found to be at fault pursuant to section 8129 of the Act and is not entitled to waiver of the overpayment in compensation.

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

⁹ 20 C.F.R. § 10.433(b); *Duane C. Rawlings*, 55 ECAB 366 (2004).

¹⁰ *Danny E. Haley*, *supra* note 3.

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

¹² *Neill A. Dewald*, 57 ECAB 451 (2006).

¹³ *Id.*

CONCLUSION

The Board finds that the Office properly determined that appellant was at fault in the creation of an overpayment in compensation and would thus not be entitled to waiver. The case is not in posture for decision regarding the amount of the overpayment and is remanded for a determination of the correct amount, to be followed by an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2007 be affirmed in part, vacated in part, and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: October 17, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board