

related left lateral epicondylitis. In the May 11, 2004 letter of acceptance, the Office informed appellant that, once she returned to work, she was to notify it immediately and that, if she received a compensation check which included payment for a period worked, she was to return it “immediately to prevent an overpayment of compensation.” The Office authorized surgery which was performed on June 2, 2004 and appellant was placed on the periodic rolls. In a July 28, 2004 letter, the Office explained appellant’s periodic compensation payments, noting as follows:

“In order to avoid an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU RETURN TO WORK. Each payment made through the Office’s automated system will include the period for which payment is made. If you have worked for any portion of this period, you must return the check to this Office. Otherwise, an overpayment of compensation may result.” The record indicates that appellant received compensation beginning on May 4, 2004 and returned to work on November 14, 2004.

On January 18, 2005 the Office issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$2,728.14, for the period November 15 through December 25, 2004 because she continued to receive disability compensation after she returned to work. The Office found her to be at fault in the creation of the overpayment because she should have been aware that she was not entitled to receive compensation for total disability. An Office form enumerates the checks mailed to appellant, indicating that she received \$1,818.76 in compensation every four weeks for the period July 11 through December 25, 2004. The Office calculation indicates that, after she returned to work, she received compensation for 14 days for the period October 31 through November 27, 2004 of \$909.38 and for the 28-day period from November 28 through December 25, 2004 of \$1,818.76, for a total \$2,728.14 in compensation.

In a February 3, 2005 letter, appellant indicated that she did not dispute that she had received an overpayment in compensation but contended that she was not at fault in the creation of the overpayment because it was an Office error and she had contacted an Office nurse who told her she would take care of everything. Appellant requested a decision on the record and submitted an overpayment questionnaire, which indicated that she had a monthly income of \$4,000.00 and monthly expenses of \$3,400.00.

By decision dated May 10, 2005, the Office finalized the determination that appellant was at fault in the creation of an overpayment in the amount of \$2,728.14 because she should have known she was not entitled to receive wage-loss compensation after she returned to full-time work on November 14, 2004. Appellant was advised to forward a check in the entire amount to the Office.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act¹ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.² No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury or earn equivalent wages.³

ANALYSIS -- ISSUE 1

In this case, appellant does not dispute that she received an overpayment in compensation. The record indicates that she returned to full-time work on November 14, 2004 and continued to receive wage-loss compensation through December 25, 2004. As appellant was not entitled to receive compensation after she returned to work on November 14, 2004 and the record supports that for the period November 15 through December 25, 2004 she received wage-loss compensation in the amount of \$2,728.14, the Office properly found that an overpayment in compensation in the amount of \$2,728.14 had been created.

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."⁴

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

" ... may 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; 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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.515(a).

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

knew or should have known to be incorrect. (This provision applies only to the overpaid individual).”⁵

ANALYSIS -- ISSUE 2

In finding appellant at fault in the creation of the \$2,728.14 overpayment, the Office found that she accepted payments for the period November 14 through December 25, 2004 that she knew or should have known to be incorrect. The Office based its finding on the letter of acceptance dated May 11, 2004 which informed appellant that once she returned to work, she was to promptly notify the Office and that, if she received a compensation check which included payment for a period worked, she was to return it to the Office “immediately to prevent an overpayment of compensation.” By letter dated July 28, 2004, the Office again advised her that in order to avoid an overpayment of compensation, she was to “notify this office immediately when you return to work” and that, if she worked for any portion of a period for which she received compensation, appellant was to return the check to the Office or an overpayment of compensation would result.

Appellant contends that she was not at fault in the creation of the overpayment because she informed an Office nurse that she had returned to work and it was the Office error to continue paying compensation. The fact that the Office may have been negligent in continuing to issue checks for temporary total disability after her return to work does not excuse appellant’s acceptance of these checks.⁶ Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that the payments he or she receives from the Office are proper.⁷ The Board finds that appellant, upon her return to full-duty work, knew or should have known that she was accepting payments which were incorrect.⁸ As appellant was at fault in accepting the overpayment in compensation, she is not entitled to waiver.⁹

The Board notes that it does not have jurisdiction to review the Office’s recovery of the overpayment as appellant is not in receipt of continuing compensation. The Board’s jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.¹⁰

CONCLUSION

The Board finds that the Office properly determined that appellant was at fault in the creation of an overpayment of compensation in the amount of \$2,728.14 and was thus, not entitled to waiver.

⁵ 20 C.F.R. § 10.433 (1999); *see Sinclair L. Taylor*, 52 ECAB 227 (2001); *see also* 20 C.F.R. § 10.430.

⁶ *Judith A. Cariddo*, 55 ECAB ____ (Docket No. 03-2270, issued February 24, 2004).

⁷ *See Alan L. Trindle*, 53 ECAB 487 (2002).

⁸ *See Henry Baskin*, 53 ECAB 719 (2002).

⁹ 20 C.F.R. § 10.433(a); *Grady A. Tubbs*, 53 ECAB 460 (2002).

¹⁰ *Robert K. Swett*, 53 ECAB 615 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2005 be affirmed.

Issued: September 22, 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