

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JULIA L. MERKEL and U.S. POSTAL SERVICE,  
POST OFFICE, Capitol Heights, Md.

*Docket No. 95-3050; Submitted on the Record;  
Issued March 19, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of the \$432.00 overpayment that occurred in appellant's case.

The Office failed to make deductions from appellant's gross compensation for optional life insurance premiums from March 15, 1993 through June 24, 1995, creating an overpayment of \$432.00. On July 18, 1995 the Office issued a preliminary determination finding that appellant was without fault in the matter of the overpayment. The Office advised that if appellant felt she should receive a waiver instead of paying the overpayment, she should submit a detailed explanation of her reasons for seeking waiver, fully complete the enclosed overpayment recovery questionnaire and attach any supporting documents in her possession. The Office advised that the financial documents necessary to assist in deciding whether to waive the overpayment should include income tax returns, bank account statements, bills and canceled checks reflecting payment, pay slips and other records to support the income and expenses listed on the enclosed questionnaire. The Office notified appellant as follows:

"It should be noted that under the provisions of section 10.324 of Title 20 of the Code of Federal Regulations, the failure to furnish the financial information requested on the enclosed questionnaire (or other information required by this Office in connection with a request for waiver) within 30 days will result in a denial of waiver of the overpayment and no further request for waiver will be considered until the requested information is furnished."

Because July has 31 days, appellant had through August 17, 1995 to furnish the Office with any information supporting a request for waiver. On August 18, 1995 the Office issued a final decision on the overpayment. Noting that there was no indication in the file that appellant had responded to its preliminary determination, the Office denied waiver and set the rate of recovery from continuing compensation at \$34.00 each period until the debt was recovered by July 1996.

On appeal, appellant states that she mailed all of her information to the Office on August 18, 1995, which was 31 days after the Office's request.

The Board finds the Office did not abuse its discretion in denying waiver of the \$432.00 overpayment that occurred in appellant's case.

Although appellant is without fault in the matter of the overpayment, she bears responsibility for providing the financial information necessary to support a waiver of the overpayment. Section 10.324 of Title 20 of the Code of Federal Regulations states:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial documentation described in [section] 10.322<sup>1</sup> as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in the denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished.”<sup>2</sup>

Because appellant failed to furnish a completed overpayment recovery questionnaire and supporting financial documentation within 30 of the Office's request, the Board finds that the Office properly denied waiver of the overpayment.<sup>3</sup> As the Office recovered the entire overpayment by July 1996, any question concerning the rate of recovery is now moot.

The August 18, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
March 19, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>1</sup> 20 C.F.R. § 10.322 sets forth the criteria for determining whether recovery of an overpayment would cause hardship by depriving the beneficiary of income and resources needed for ordinary and necessary living expenses, thereby defeating the purpose of the Federal Employees' Compensation Act and precluding recovery.

<sup>2</sup> 20 C.F.R. § 10.324.

<sup>3</sup> *E.g., Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986).