

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE COCKERILL and PEACE CORPS,
Washington, DC

*Docket No. 00-1497; Submitted on the Record;
Issued April 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to waive an overpayment of compensation in the amount of \$1,625.00.

The Office accepted that appellant sustained a post-traumatic stress disorder as a result of a sexual assault that occurred on October 7, 1990 while appellant, then 27 years old, was working as a volunteer on St. Kitts in the West Indies. The Office paid appellant compensation for temporary total disability beginning November 12, 1990.

In October 1999 the Office became aware that appellant had worked during 1996. It ascertained from the State of Texas Department of Public Safety that appellant had worked there as an accident code clerk from October 1 to December 9, 1996 at a pay rate of \$1,261.00 per month. The Social Security Administration reported that appellant earned \$2,522.00 in 1996.

On February 3, 2000 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,625.00 that arose because she had earnings during the period from October 1 to December 9, 1996, a period during which she received compensation for temporary total disability. The Office also preliminarily determined that appellant was without fault in the matter of the overpayment. The Office allotted appellant 30 days to request a telephone conference, review of the written evidence or hearing, and to submit financial information to allow the Office to determine if it should waive recovery of the overpayment.

By decision dated March 7, 2000, the Office found that appellant received an overpayment of compensation in the amount of \$1,625.00 that arose because she had earnings during the period from October 1 to December 9, 1996, a period during which she received compensation for temporary total disability. The Office refused to waive recovery of the overpayment on the basis that appellant did not provide financial information or request waiver of the overpayment.

Section 8129(a) of the Federal Employees' Compensation Act 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 tests 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 section 10.436 of the Office's regulations¹ provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship to a presently or formerly entitled beneficiary because the beneficiary from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and (2) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics.

Section 10.438 of the Office's regulations² states:

"(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

"(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished."

In the present case, appellant does not dispute the existence or the amount of the overpayment, which arose because she had earnings during a period for which she received compensation for temporary total disability. On appeal, appellant contends that she submitted the Office's overpayment recovery questionnaire to the Office on February 23, 2000, 10 days before the due date for a response to the Office's February 3, 2000 preliminary determination. Appellant submitted a copy of this questionnaire to the Board with her March 11, 2000 request for an appeal of the Office's March 7, 2000 final decision on her overpayment. The Board's review, however, is limited by its regulations³ to "the evidence in the case record at the time of its final decision." As the case record at the time of the Office's March 7, 2000 decision does not include appellant's overpayment recovery questionnaire, the Board cannot review this evidence for the first time on appeal.

At the time of the Office's final decision on appellant's overpayment, the Office had not received any information on appellant's income, expenses and assets. Under its regulations

¹ 20 C.F.R. § 10.436.

² 20 C.F.R. § 10.438.

³ 20 C.F.R. § 501.2(c).

quoted above, the Office properly denied waiver of recovery of appellant's overpayment of compensation. Appellant can have a further request for waiver considered by submitting the overpayment recovery questionnaire to the Office.

The decision of the Office of Workers' Compensation Programs dated March 7, 2000 is affirmed.

Dated, Washington, DC
April 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member