

The issues are: (1) whether the Office properly denied waiver of recovery of appellant's \$4,852.06 overpayment; and (2) whether the Office properly deducted \$150.00 every 28 days from appellant's continuing compensation.

FACTUAL HISTORY

This case was previously before the Board.¹ Appellant, a 69-year-old passport specialist, has an accepted claim for left rotator cuff sprain, which arose on or about December 7, 2006.² The Board affirmed the Office's finding that she received an overpayment of \$4,852.06 for the period March 31 through May 10, 2008.³ The Board disagreed, however, in the finding that appellant was at fault in creating the overpayment. Accordingly, the Board remanded the case for consideration of whether she was entitled to waiver of recovery of the overpayment. The Board's August 18, 2009 decision is incorporated herein by reference.

On remand, the Office issued a September 22, 2009 preliminary overpayment determination that incorporated the Board's August 18, 2009 findings with respect to the fact of the \$4,852.06 overpayment and the absence of fault. Additionally, it explained the legal criteria for determining entitlement to waiver of recovery. Appellant was afforded 30 days to submit an overpayment recovery questionnaire (Form OWCP-20) and supporting documentation.

Appellant returned the questionnaire on October 17, 2009.⁴ She reported receiving \$1,321.00 per month in social security benefits. Appellant also received net monthly wage-loss compensation of \$3,594.11, for a total monthly income of \$4,915.11.⁵ She reported total monthly expenses of \$3,498.26. Appellant's cash on hand, and checking/savings account balances totaled \$7,603.00. During a November 17, 2009 telephone conference, she disclosed that she had approximately \$90,000.00 in her Federal Thrift Savings Plan (TSP) retirement account.

By decision dated December 16, 2009, the Office denied waiver of recovery of appellant's \$4,852.06 overpayment. Additionally, it imposed a repayment schedule of \$150.00 to be withheld every 28 days from her continuing compensation payments.⁶ Based on the Office's calculation, the overpayment plus interest (\$184.58) would be fully absorbed on or about July 28, 2012.

¹ Docket No. 09-372 (issued August 18, 2009).

² The Office also authorized a June 7, 2007 left shoulder arthroscopy.

³ Appellant had returned to work in a part-time, limited-duty capacity on March 31, 2008, yet she continued to receive wage-loss compensation for temporary total disability through May 10, 2008.

⁴ Appellant also provided copies of bank statements, credit card and utility payments, and her 2008 federal individual income tax return.

⁵ After returning to part-time work in March 2008, appellant stopped work entirely on September 8, 2008. The Office returned her to the periodic compensation rolls effective September 28, 2008. As of October 25, 2009, appellant's 28-day gross compensation was \$3,458.00. Her net 28-day compensation was \$3,317.64, which corresponds to a monthly net of \$3,594.11 ($\$3,317.64 \times 13 \div 12$). The record indicates that appellant is single and has no qualifying dependents for purposes of determining entitlement to compensation benefits.

⁶ The \$150.00 deduction reduced appellant's 28-day net benefit to \$3,167.64, which corresponds to a monthly net payment of \$3,431.61.

LEGAL PRECEDENT -- ISSUE 1

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of the Federal Employees' Compensation Act or would be against equity and good conscience.⁷ Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by the Office.⁸ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁹

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office.¹⁰ This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.¹¹ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹²

ANALYSIS -- ISSUE 1

Appellant argued that repayment of the \$4,852.06 overpayment was "really a hardship." She also took exception to the Office's inclusion of her \$90,000.00 TSP account as an asset. Lastly, appellant claimed "hardship" with respect to the withholding of \$150.00 from her continuing compensation payments.

An individual is deemed to need substantially all of her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ Based on information provided by appellant, her monthly income (\$4,915.11) exceeds her monthly expenses (\$3,498.26) by more than \$1,400.00. Apart from her TSP

⁷ 5 U.S.C. § 8129(b) (2006); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437 (2009).

⁸ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

⁹ 20 C.F.R. § 10.437(a), (b).

¹⁰ *Id.* at § 10.438(a).

¹¹ This information will also be used to determine the repayment schedule, if necessary. *Id.*

¹² 20 C.F.R. § 10.438(b).

¹³ *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

retirement account, she reported assets of \$7,603.00 (cash, checking/savings), which exceeds the \$4,800.00 asset base for an individual with no eligible dependents.¹⁴ Accordingly, appellant has not demonstrated that recovery of the overpayment would defeat the purpose of the Act. Additionally, she has not alleged, nor does the record indicate, that she relinquished a valuable right or changed her position for the worse as a result of receiving the overpaid benefits. As such, there is no basis to conclude that recovery of the overpayment would be against equity and good conscience. The Office properly found that appellant was not entitled to waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

When an overpayment has been made to an individual who is entitled to further payments and no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.¹⁵

ANALYSIS -- ISSUE 2

With respect to the Office's decision to deduct \$150.00 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is appropriate. The record establishes that she has a monthly surplus of at least \$1,400.00 that could be applied toward recovery of the \$4,852.06 overpayment. Even after the \$150.00 is deducted from appellant's continuing compensation, she still has a monthly surplus of approximately \$1,250.00, which does not include her TSP retirement fund. Under the circumstances, the Board finds that the Office reasonably imposed a repayment schedule of \$150.00 every four weeks.

CONCLUSION

Appellant is not entitled to waiver of recovery of the \$4,852.06 overpayment. The Board further finds that the Office reasonably imposed a repayment schedule of \$150.00 every 28 days to be withheld from her continuing compensation payments.

¹⁴ The procedure manual identifies both liquid and nonliquid assets that shall be considered in connection with a request for waiver of recovery. These include but are not limited to "cash, the value of stocks, bonds, savings accounts, mutual funds and certificates of deposit." Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(4) (June 2009). There is also a list of exempt assets, such as one's "principal family domicile." *Id.* Retirement accounts in general and the TSP in particular, are not included among the procedure manual's list of exempt assets.

¹⁵ 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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