

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 07-1838
Issued: December 20, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 15, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly determined that an overpayment of compensation of \$3,519.10 was created from January 1, 2004 to June 10, 2006; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly determined the overpayment should be recovered by deducting \$45.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

The Office accepted that appellant sustained right carpal tunnel syndrome and a triangular cartilage tear of the right hand causally related to a March 14, 1991 employment injury. On August 13, 1992 appellant filed an occupational disease claim that was accepted for

left wrist tendinitis. She began receiving compensation for temporary total disability. According to information provided on a Form CA-1032, appellant had a dependant son, born March 22, 1982, living at home as a student. Her compensation was based on the augmented compensation rate of three quarters of her monthly pay.

By decision dated May 22, 2006, the Office suspended appellant's compensation as of June 11, 2006 on the grounds that she had not completed the Form CA-1032 sent to her on November 16, 2004 and September 14, 2005.¹ On July 5, 2006 appellant completed a Form CA-1032 indicating that she did not have any dependants. The form provided an explanation as to who may be claimed as a dependant and appellant indicated that her son was working as of January 2004 and was not a dependant from that time.

In a letter dated February 1, 2007, the Office made a preliminary determination that an overpayment of \$3,519.10 was created from January 1, 2004 to June 10, 2006. The Office explained that appellant was paid at the augmented compensation rate, but she did not have any dependants during that period. According to the Office, appellant was paid \$31,701.10 during this period, but should have been paid \$28,182.00. With respect to fault, the Office determined that appellant was not at fault. Appellant was advised to complete the enclosed overpayment recovery questionnaire (OWCP-20), and to attach supporting documents such as bank account statements and bills, to support the income and expenses listed.

The Office received a completed OWCP-20 dated February 17, 2007. Appellant reported \$2,034.00 in income, and \$2,116.00 in expenses. She did not provide any supporting financial documents, stating on the form that she did not have any documents.

By decision dated June 15, 2007, the Office finalized the preliminary determination of a \$3,519.10 overpayment. The Office denied waiver of the overpayment, noting that supporting financial documents were not received. With respect to repayment, the Office determined that \$45.00 would be deducted from continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

The basic rate of compensation under the Federal Employees' Compensation Act is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependants as defined in the Act, he or she is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent, for a total of 75 percent of monthly pay.² A dependant under 5 U.S.C. § 8110 includes a student, which under 5 U.S.C. § 8101(17) means an individual under 23 years old who has not completed four years of education beyond high school and is pursuing a full-time course of study.³

¹ Appellant did not request the Board to review this decision.

² 5 U.S.C. § 8110(b); *see also William G. Dimick*, 38 ECAB 751 (1987).

³ *See also* 20 C.F.R. § 10.405 (1999).

ANALYSIS -- ISSUE 1

The record establishes that appellant was paid compensation at the augmented rate for one or more dependants. Appellant indicated that she had a son, born March 22, 1982, living with her as a student. In her July 5, 2006 CA-1032, appellant indicated that as of January 2004, her son was working and was no longer a dependant. As of January 1, 2004, appellant's son would have been 21 years old, and, as noted above, he would be a dependant only if he was a full-time student who had not yet completed four years of school beyond the high school level.

The Board accordingly finds that, based on the evidence of record, appellant was not entitled to compensation at the augmented rate as of January 1, 2004. The Office found that, during the period January 1, 2004 to June 10, 2006, appellant received \$31,701.10 in compensation but should have received \$28,182.00 based on compensation at the basic statutory rate. There is no contrary evidence. Therefore an overpayment of \$3,519.10 was created in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act⁴ provides: "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 or would be against equity and good conscience."⁵ Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in 20 C.F.R. §§ 10.434 to 10.437.

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses," and, also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.⁶ For waiver under the "defeat the purpose of the Act" standard, appellant must show that she needs substantially all of her current income to meet current ordinary and necessary living expenses, and that her assets do not exceed the resource base.⁷

Pursuant to 20 C.F.R. § 10.437, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 5 U.S.C. § 8129(b).

⁶ Office procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependant plus \$960.00 for each additional dependant. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

⁷ See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

severe financial hardship in attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁸

20 C.F.R. § 10.438 provides:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of the overpayment would defeat the purpose of the [Act], 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.”⁹

ANALYSIS -- ISSUE 2

The Office requested that appellant complete an OWCP-20 questionnaire and submit supporting documents on income and expenses. While appellant did complete an OWCP-20, she did not provide any supporting financial documentation. She stated on the form that she did not have any documents, but the documents in question, such as bank statements, bills and receipts, are readily available to claimants. Such information is necessary for a proper determination of whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

It is appellant’s responsibility to submit the necessary financial information to properly adjudicate the waiver issue. Under the Office’s regulations at 20 C.F.R. § 10.438, failure to submit the requested information will result in denial of waiver. The Board finds that appellant did not submit the requested financial information and the Office properly denied waiver in this case.

LEGAL PRECEDENT -- ISSUE 3

With respect to recovery of the overpayment, the Office’s regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate

⁸ 20 C.F.R. § 10.437 (1999).

⁹ 20 C.F.R. § 10.438 (1999).

of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize hardship.”¹⁰

ANALYSIS -- ISSUE 3

The Office determined that appellant should repay the overpayment by deducting \$45.00 from continuing compensation payments. According to the regulations, the Office should consider the financial circumstances of the individual to minimize hardship. In this case, as discussed above, appellant did not provide detailed financial information. She indicated on the OWCP-20 form that she had \$2,034.00 in monthly compensation income. Based on the limited information available, the Office set the repayment rate at \$45.00 from monthly compensation. There is no evidence that the Office failed to minimize the hardship based on the relevant evidence of record. The Board therefore finds that the Office properly determined that the overpayment could be recovered by deducting \$45.00 from appellant’s continuing compensation payments.

CONCLUSION

An overpayment of \$3,519.10 was created from January 1, 2004 to June 10, 2006 because appellant received compensation at the augmented rate but did not have any dependants. The Office properly denied waiver of the overpayment and determined the overpayment should be recovered by deducting \$45.00 every 28 days from continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated June 15, 2007 is affirmed.

Issued: December 20, 2007
Washington, DC

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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

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

¹⁰ 20 C.F.R. § 10.441 (1999).