

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUDOLPH A. GECI and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLY SYSTEMS COMMAND, San Diego, CA

*Docket No. 98-1791; Submitted on the Record;  
Issued March 29, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied waiver of recovery of an overpayment of compensation benefits in the amount of \$8,324.55; and (2) whether the Office properly required repayment of the overpayment by withholding \$300.00 per month from appellant's continuing monthly compensation benefits.

On March 27, 1990 appellant, then a 57-year-old warehouse worker, sustained a lumbar strain and permanent aggravation of degenerative disc disease in the performance of duty.

By letter dated August 31, 1990, the Office advised appellant that he had been placed on the periodic compensation rolls to receive compensation benefits for temporary total disability effective August 26, 1990.

By letters dated November 8 and 24, 1995, the Office advised appellant that it had made a preliminary determination that an overpayment of compensation had occurred in his case in the amount of \$535.73 because life insurance premiums should have been deducted from his compensation benefits effective July 21, 1990 but deductions were not made until January 8, 1995 and that another overpayment had occurred in the amount of \$7,788.82 because the Office did not deduct from his compensation payments premiums for family health insurance coverage during the period December 16, 1990 through November 11, 1995. The Office advised appellant that a finding had been made that he was without fault in the matter of the overpayments of compensation and that, if he disagreed with the fact or the amount of the overpayments, he had the right to submit new evidence. He was advised that if he felt that he should receive a waiver of the overpayment he could request a precoupment hearing and should submit a detailed explanation of his reasons for seeking waiver and a completed overpayment recovery questionnaire with supporting documents.

On January 8, 1996 appellant, submitted a completed overpayment questionnaire. He noted that he had a total monthly income of \$4,019.00 and monthly expenses of \$2,875.74. He

indicated that, in addition to his home, he owned a rental property, which had a value of \$60,000.00, that he had \$542.35 in his checking account and \$1,112.89 in his savings account.

By decision dated June 14, 1996, the Office advised appellant that it had made a final decision that an overpayment of compensation had occurred in his case in the amount of \$7,788.82 and that the overpayment of compensation occurred because health benefits deductions were not made from December 16, 1990 through November 11, 1995 and that a second overpayment of \$535.73 had occurred because life insurance premiums were not deducted from July 21, 1990 through January 7, 1995, creating a total overpayment of compensation benefits in the amount of \$8,324.55. The Office noted that it had reviewed the circumstances of the case and found that they did not warrant waiver of recovery of the overpayment. The Office noted that appellant's monthly income totaled \$4,019.00 with monthly expenses of \$2,875.74, leaving a discretionary income of \$1,143.26 each month, and his assets included a \$60,000.00 rental property and \$1,655.24 cash on hand. The Office advised that \$300.00 per month would be withheld from his continuing compensation benefits effective June 23, 1996 to recover the overpayment.

The record shows that appellant had requested an appeal to the Board in September 1996 but that the case was remanded for proper assemblage of the case record and a *de novo* decision in order to protect appellant's appeal rights.<sup>1</sup> Upon remand of the case record, the Office issued a decision dated February 13, 1998 containing the same factual findings as in its June 14, 1996 decision.

On appeal, appellant does not challenge the fact or the amount of the overpayment. He appeals the Office's denial of waiver of recovery of the overpayment.

The Board finds that the Office properly denied waiver of recovery of the overpayment in the amount of \$8,324.55.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.<sup>2</sup> These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "Adjustment or recovery [of an overpayment] 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."<sup>3</sup> Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

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<sup>1</sup> See Docket No. 96-2581 (issued July 24, 1997).

<sup>2</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>3</sup> 5 U.S.C. § 8129(b).

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 sections 10.322 and 10.323, respectively, of Title 20 of the Code of Federal Regulations.

Section 10.322(a) provides, generally, that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and, also, if the individual's assets, those which are not exempt from recovery, do not exceed a resource base of \$3,000.00 (or \$5,000.00 if the individual has a spouse or one dependent, plus \$600.00 for each additional dependent).<sup>4</sup> Section 10.323 provides, generally, that recovery of an overpayment would be against equity and good conscience if: (1) the overpaid individual would experience severe financial hardship in attempting to repay the debt, with "severe financial hardship" determined by using the same criteria set forth in section 10.322; or (2) the individual, in reliance on the payment which created the overpayment, relinquished a valuable right or changed his position for the worse.<sup>5</sup>

Appellant has not established that recovery of the overpayment would defeat the purpose of the Act because he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses and that his assets do not exceed the allowable resource base. As noted above, appellant's monthly income exceeds his monthly ordinary and necessary expenses by approximately \$1,143.26 and his assets include a \$60,000.00 rental property and \$1,655.24 cash on hand. As a result, recovery of the overpayment in the amount of \$8,324.55 would not defeat the purpose of the Act.

With respect to whether recovery of the overpayment would be against equity and good conscience, the evidence does not demonstrate that he relinquished a valuable right or changed his position for the worse in reliance on the overpaid compensation.

Inasmuch as appellant has not shown that recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience. The Board finds that the Office properly denied waiver of recovery of the overpayment of compensation benefits in the amount of \$8,324.55.

The Board further finds that the Office properly required repayment of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every four weeks.

Section 10.321 of Title 20 of the Code of Federal Regulations provides in pertinent part:

"Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual

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<sup>4</sup> 20 C.F.R. § 10.322(a).

<sup>5</sup> 20 C.F.R. § 10.323.

and any other relevant factors, so as to minimize any resulting hardship upon such individual.”<sup>6</sup>

Based upon appellant’s information regarding his income, assets, and expenses, the Office’s decision to withhold \$300.00 from appellant’s continuing compensation benefits was made with due regard to his monthly household income and monthly expenses and assets and is, therefore, appropriate under the circumstances of this case. Therefore, the Board finds that the Office properly determined that recovery of the overpayment of compensation benefits would be obtained by withholding \$300.00 per month from appellant’s continuing monthly compensation benefits.

The decision of the Office of Workers’ Compensation Programs dated February 13, 1998 is affirmed.

Dated, Washington, D.C.  
March 29, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> 20 C.F.R. § 10.321(a). *See Donald R. Schueler*, 39 ECAB 1056, 1061-62 (1988).