

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL F. CURCIO and DEPARTMENT OF THE AIR FORCE,
McGUIRE AIR FORCE BASE, Trenton, NJ

*Docket No. 99-1527; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for an oral hearing.

This case has previously been before the Board on appeal. In its December 27, 1988 decision, adopting the October 26, 1987 decision of the Office hearing representative, the Board found that appellant had forfeited his compensation benefits from February 13, 1974 to April 17, 1983 and that he had received an overpayment of compensation in the amount of \$120,271.79.¹ The Board noted that there was no final decision regarding the alleged forfeiture from April 19, 1983 to May 24, 1984 for an overpayment in the amount of \$14,051.42.

Following the Board's December 27, 1988 decision, the Office issued a decision dated August 18, 1989, finding forfeiture of compensation benefits from April 19, 1983 to May 24, 1984 resulting in an overpayment of \$14,051.42

The Office collected the overpayment through appellant's Office of Personnel Management (OPM) benefits in the amount of \$550.00 per month. In a letter dated December 4, 1991, the Office stopped the deductions finding that appellant had repaid the debt of \$14,051.42. On November 2, 1995 the Office explained to appellant that the larger of his two debts remained and offered to reduce his debt from \$120,217.79 to \$73,308.56 with no back interest. Appellant did not respond and the Office requested that OPM resume deductions to collect the overpayment. OPM began deducting \$745.00 per month from appellant's benefits on March 1, 1996. In a letter dated June 25, 1996, appellant requested that the Office reduce

¹ Docket No. 88-620 (issued December 27, 1988).

repayment to \$550.00 per month. The Office denied this request in a letter dated September 3, 1996.²

Appellant requested a hearing on March 3, 1999. By decision dated April 12, 1999, the Office's Branch of Hearings and Review found that the Board had previously issued a decision on the issue of the overpayment and that it did not have jurisdiction to review decisions of the Board. The Branch of Hearings and Review stated that appellant's claim could be addressed through the reconsideration process.

Section 8124(b) of the Act,³ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁴ The Act also provides that decisions of the Board on appeals taken from claims of employee are final.⁵

In this case, the Branch of Hearings and Review properly informed appellant that decisions of the Board are final and that the Office may not review such decisions. Therefore, the Office properly found that the case was not in posture for a hearing since the Board had previously rendered a decision regarding the issues of whether appellant had forfeited his compensation benefits and incurred an overpayment in the amount of \$120,271.79 and since appellant had not requested reconsideration before the Office following the issuance of the Board's decision.⁶

The Branch of Hearings and Review properly advised appellant that he might request reconsideration pursuant to 5 U.S.C. § 8128(a) with regard to the issue of forfeiture.

² With respect to recovery of an overpayment, the Board's jurisdiction is limited to reviewing those cases of whether the Office seeks recovery from continuing compensation benefits under the Federal Employees' Compensation Act. Where appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the Office's recovery of an overpayment under the Debt Collection Act. *See Lewis George*, 45 ECAB 144, 154 (1993).

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 5 U.S.C. § 8149.

⁶ *Albert Zerega*, 45 ECAB 860, 863 (1994).

The decision of the Office of Workers' Compensation Programs dated April 12, 1999 is hereby affirmed.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member