

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERONICA LAWRENCE and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 01-1787; Submitted on the Record;
Issued July 15, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of \$15,368.42; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly withheld \$260.00 a month from appellant's continuing compensation to recover the overpayment.

On January 31, 1990 appellant, then a 40-year-old postal clerk, filed a notice of occupational disease for an emotional condition. The Office accepted the claim for temporary aggravation of dysthymia, depressive reaction and neurotic depression and began paying appropriate compensation benefits.

Appellant informed the Office that she was returning to work on December 1, 1998 as an addiction substance abuse counselor at a substance abuse center. She advised that she was earning \$483.20 a week. On April 17, 2000 the Office issued a preliminary determination that an overpayment of compensation occurred in appellant's case in the amount of \$15,368.42 for the period December 1, 1998 through March 25, 2000, which resulted because appellant's compensation was not adjusted when she returned to work. The Office found that she was without fault in the creation of the overpayment, informed her of the right to a prerecoupment hearing and enclosed an overpayment recovery questionnaire for review in determining whether the overpayment should be waived. Appellant completed the questionnaire and requested a waiver of the overpayment and a hearing. In a decision dated April 24, 2001, the hearing representative finalized the preliminary determination and denied waiver of recovery of the overpayment.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$15,368.42.

The Office found by its April 17, 2000 preliminary determination that appellant received an overpayment of \$15,368.42 for the period December 1, 1998 through March 25, 2000, because the Office did not adjust the rate of compensation benefits when appellant returned to

work beginning December 1, 1998. The disability benefits payment work sheet, Form CA-25, and the Employment Standards Administration computer printouts support this finding. Further, appellant does not refute the fact of an overpayment and there is no evidence to the contrary.¹

The Board further finds that the Office did not abuse its discretion in denying waiver of the overpayment after finding that appellant was without fault.

Section 8129(a)² of the Federal Employees' Compensation Act provides that when an overpayment of compensation occurs "because of an error of fact or law," adjustment or recovery shall be made by decreasing later payments to which the individual is entitled.³ The only exception to this requirement that an overpayment must be recovered is set forth 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 or would be against equity and good conscience."⁴

Thus, finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.⁵ The Office must exercise its discretion to determine whether recovery of the overpayment would "defeat the purpose of the Act or would be against equity and good conscience," pursuant to the guidelines provided in sections 10.322-323 of the implementing federal regulations.⁶

Section 10.434⁷ provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a beneficiary of income and resources needed for ordinary and necessary living expenses when the individual 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 the individual's assets do not exceed the resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent, plus \$600.00 for each additional dependent. For waiver under the "defeat the

¹ Appellant did ask, however, that the Board reduce the amount owed since she was timely in reporting her work status to the Office and since she is experiencing financial difficulties. The Board notes that the Office already analyzed appellant's financial status when determining waiver and recovery and timeliness in reporting one's work status to the Office is not a factor in determining the amount owed and cannot be reduced by the Board.

² 5 U.S.C. § 8129(a).

³ Federal (FECA) Procedure Manual, Part 9 -- Debt Management, *Initial Overpayment Actions*, Chapter 9.200.6(b)(3) (September 1989); *Katie L. Summers*, 46 ECAB ____ (Docket No. 93-2381, issued July 21, 1995).

⁴ 5 U.S.C. § 8129(b).

⁵ *William J. Murphy*, 40 ECAB 569, 571 (1989).

⁶ 5 C.F.R. §§10.322-23.

⁷ 20 C.F.R. § 10.434.

purpose of the Act” standard, appellant must show both that she needs substantially all of her current income to meet current ordinary and necessary living expenses and that his or her assets do not exceed the resource base of \$3,000.00.⁸

In this case, appellant’s income consists of unemployment benefits of \$800.00 a month and compensation benefits of \$628.00 a month, which equals \$1,428.00. She indicated in her overpayment recovery questionnaire that she has monthly expenses of \$1,967.00 and assets of \$14,068.00. Thus, she requires substantially all of her income to meet current ordinary and necessary living expenses. However, because appellant’s assets of \$14,068.00 exceed the resource base of \$3,000.00, she is not entitled to waiver of recovery of the overpayment. The Board, therefore, finds that the Office did not abuse its discretion in denying waiver of the overpayment.

The Board further finds that the Office improperly withheld \$260.00 a month from appellant’s continuing compensation to recover the overpayment.

Section 10.441(a)⁹ provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustments 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 and any other relevant factors, so as to minimize any resulting hardship upon such individual.”

In this case, appellant’s monthly expenses exceeded her monthly income. The hearing representative in his April 24, 2001 decision, acknowledged that appellant’s monthly expenses were \$1,967.00 and her monthly income was \$1,428.00. The Office did not explain why it arbitrarily chose \$260.00 a month as the repayment amount. On remand, the Office should explain why \$260.00 a month is a reasonable monthly repayment amount, or determine a more equitable repayment amount better suited to appellant’s financial situation.

⁸ *Jesse T. Adams*, 44 ECAB 256, 260 (1992).

⁹ 20 C.F.R. § 10.441(a).

The April 24, 2001 decision of the Office of Workers' Compensation Programs is affirmed as to the issues of whether an overpayment occurred and whether waiver was properly denied, but remanded as to the monthly repayment amount set forth by the Office.

Dated, Washington, DC
July 15, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member