

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

RALPH P. BEACHUM, SR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 03-2142
Issued: April 1, 2004**

Appearances:
Ralph P. Beachum, Sr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

Appellant filed an appeal on September 4, 2003 of a June 16, 2003 decision of the Office of Workers' Compensation Programs finding a \$10,197.64 overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issue.

ISSUES

The issues on appeal are: (1) whether the Office properly determined that appellant received an overpayment of compensation in the amount of \$10,197.64 due to the payment of augmented compensation during the periods August 27, 1992 through January 26, 1993 and from August 1, 1993 through November 9, 1996, when he had no dependents; (2) whether the Office properly found appellant at fault in the creation of the overpayment; and (3) whether the Office properly required repayment of the overpayment by withholding \$190.00 from appellant's continuing compensation every four weeks.

FACTUAL HISTORY

The Office accepted that on September 1, 1982 appellant, then a 47-year-old letter carrier and collection driver, sustained a lumbosacral strain with a permanent aggravation of preexisting degenerative lumbar disc disease when he lifted a sack of mail. He stopped work on September 1, 1982 and received compensation for total disability beginning September 2, 1982.

Appellant received compensation at the augmented rate as he claimed his son, Eric Ray Beachum, born October 4, 1971, as a dependent on affidavits of earnings and employment (Form CA-1032), dated March 18, 1986, July 22, 1989, May 21 and December 19, 1991 and November 29, 1992.¹ On the July 22, 1989 form he noted that his son was a “full-time student.” Appellant assisted in completing his son’s financial aid applications in 1989 and 1990, by requesting documentation of his compensation from the Office.

In a July 23, 1993 letter (Form CA-1615), the Office advised appellant that a full-time student, enrolled in an approved post-secondary program, could qualify as a dependent from age 18 until the end of the semester in which he turned 23 or completed 4 years of education beyond high school. The Office requested that he submit proof of any qualifying enrollment.² In a December 24, 1996 letter, the Office advised appellant to submit evidence within 30 days establishing when his son ceased to be enrolled as a full-time student or his compensation would be adjusted to the basic statutory 2/3 rate retroactive to 1991. The record indicates that he did not respond to either letter.

By notice dated July 2, 2001³ and finalized by decision dated January 15, 2002, the Office found that appellant was overpaid compensation in the amount of \$18,709.88 on the grounds that he received augmented compensation from October 4, 1989 to November 9, 1996, while he had no qualifying dependents.⁴ Appellant’s son turned 18 years of age on October 4, 1989 but there was no evidence of record that he was a full-time student after age 18 or was incapable of self-support due to a disability. The Office found appellant at fault in the creation of the overpayment as he knew or should have known he was not entitled to receive augmented compensation if he had no eligible dependents. The Office directed recovery of the overpayment by deducting \$190.00 every four weeks from appellant’s continuing compensation payments.

On October 23, 2002 the Office again requested that appellant submit information regarding his son’s educational enrollment. In response, he submitted certificates from San Francisco State University showing that his son was a full-time student for the following

¹ Appellant submitted evidence that he was divorced on February 19, 1988 and had not remarried.

² In a December 3, 1996 letter, the Office advised appellant that his compensation would be reduced to the basic statutory 2/3 rate as he claimed no dependents on his October 11, 1996 Form CA-1032.

³ The Office afforded appellant the opportunity to submit financial information substantiating financial hardship and to request a preresoupment hearing. However, he did not submit additional evidence or argument prior to issuance of the January 15, 2002 decision.

⁴ The Office found that, for the period October 4, 1989 to November 9, 1996, appellant received \$169,062.85 in compensation, at the 3/4 rate, but should only have received compensation at the basic or 2/3 rate in the amount of \$150,352.97, a difference of \$18,709.88.

semesters: August 28 to December 22, 1989; January 29 to May 25, 1990; August 27 to December 31, 1990; January 28 to May 24, 1991; August 29, 1991 to January 2, 1992; January 30 to June 1, 1992; January 27 to June 1, 1993. Appellant's son studied part time for the following periods: August 27, 1992 to January 24, 1993; August 24, 1994 to January 3, 1995; January 23 to June 2, 1995; August 28, 1995 to January 6, 1996.

By decision issued June 16, 2003, the Office modified the amount of the overpayment to \$10,197.64, finding that appellant's son was a dependent for part of the previously determined overpayment period from October 4, 1989 to November 9, 1996. Based on the established periods of full-time college enrollment, the Office reduced the period of the overpayment from August 27, 1992 to January 26, 1993 and from August 1993 to November 9, 1996. At those times, his son was enrolled as a student only part time, not enrolled or had turned 23 years old. The Office directed that the sum of \$190.00 would continue to be withheld from appellant's compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employee's Compensation Act provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁵ If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.⁶ Under section 8110⁷ of the Act, an employee is entitled to compensation at the augmented rate of 3/4 of his weekly pay if he has one or more dependents. A child is considered a dependent if he or she is under 18 years of age, is over 18 but is unmarried and incapable of self support because of a physical or mental disability or is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university or training program.⁸ If a claimant receives augmented compensation during a period where he has no eligible dependents, the difference between the compensation he was entitled to receive at the 2/3 compensation rate and the augmented compensation received at the 3/4 rate constitutes an overpayment of compensation.⁹

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8105(a). *See also Duane C. Rawlings*, 55 ECAB ____ (Docket No. 02-2172, issued March 8, 2004).

⁷ 5 U.S.C. § 8110.

⁸ 5 U.S.C. §§ 8110(a)(1) and 8101(17); 20 C.F.R. §10.405 (2003). *See Leon J. Mormann*, 51 ECAB 680 (2000).

⁹ *Diana L. Booth*, 52 ECAB 370 (2001) (the Board held that as the claimant received compensation at the augmented rate for certain periods, even though she had no dependents, she received an overpayment of compensation).

ANALYSIS -- ISSUE 1

Appellant's employment injury left him incapable of earning the wage he received at the time of injury.¹⁰ He received compensation under the Act beginning September 2, 1982 on the basis that his disability was total. During the periods August 27, 1992 to January 26, 1993 and August 1, 1993 to November 9, 1996, appellant had only one possible dependent, his son, Eric Ray Beachum, who became 18 years old on October 4, 1989. The record contains no evidence that his son was disabled due to a mental or physical condition. Appellant's son would not qualify as a dependent unless he was an unmarried student attending an approved full-time course of study, had not completed four years of post high-school education and had not completed the academic semester in which he became 23 years old.

Appellant submitted evidence establishing that his son was a full-time student in an approved program for the periods August 29, 1991 to January 2, 1992, January 30 to June 1, 1992 and January 27 to June 1, 1993. Therefore, his son qualified as a dependent for those periods, entitling appellant to receive compensation at the augmented 3/4 rate. However, his son was not enrolled full time as a student for the periods August 27, 1992 to January 26, 1993 and from August 1, 1993 to October 3, 1994, thereby disqualifying him as a dependent for these periods. He became 23 years old on October 4, 1994, thus ending his eligibility for dependent status. Appellant received augmented compensation from August 27, 1992 to January 26, 1993 and from August 1, 1993 to November 9, 1996, although he had no dependents. Thus, the \$10,197.64 difference between the basic or 2/3 compensation rate appellant should have received and the augmented or 3/4 compensation rate he did receive, constitutes an overpayment of compensation. Therefore, the Board finds that the Office correctly determined the fact and amount of overpaid compensation in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of the Act provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled.¹¹ The only exception to this requirement is a situation which meets the tests set forth as follows 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 this subchapter or would be against equity and good conscience."¹² No waiver of payment is possible if the claimant is not "without fault" in helping to create the overpayment.¹³

¹⁰ See 20 C.F.R. § 10.5(f) ("disability" defined).

¹¹ 5 U.S.C. § 8129(a).

¹² 5 U.S.C. § 8129(b).

¹³ *William F. Salmonson*, 54 ECAB ____ (Docket No. 02-1448, issued October 9, 2002) (the Board held that no waiver of compensation is possible if the claimant is at fault in the creation of the overpayment of compensation).

In determining whether an individual is not “without fault” or, alternatively, “with fault,” section 10.433 of Title 20 of the Code of Federal Regulation states, in pertinent part:

An individual is with fault in the creation of an overpayment who--

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.”¹⁴

Whether or not the Office determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.¹⁵ In applying the tests to determine fault, the Office applies a “reasonable person” test.¹⁶

ANALYSIS -- ISSUE 2

In this case, the Office applied the third standard under section 10.433, finding appellant at fault in creation of the overpayment as he knew or should have known he was not entitled to receive augmented compensation if he had no eligible dependents for the periods August 27, 1992 to January 26, 1993 and from August 1, 1993 to November 9, 1996.

The Board finds that appellant had actual notice of the criteria for student dependents, as they were set forth in the Forms EN1032 that he signed and returned on March 18, 1986, July 22, 1989, May 21 and December 19, 1991 and November 29, 1992. The Office advised appellant of these eligibility requirements in July 23, 1993 and December 24, 1996 letters. The record also demonstrates that appellant was involved with his son’s education as he assisted his son in obtaining financial aid in 1989 and 1990. The Board finds that appellant knew his son’s age and, the date when he turned 23 years of age. The semester in which appellant’s son became 23 years old ended on January 3, 1995, such that he no longer qualified as a dependent for the period on and after January 4, 1995.

Therefore, the Office’s finding of fault is correct under the facts and the circumstances of this case, as appellant should have been aware of the criteria for student dependents and his son’s enrollment status.

¹⁴ 20 C.F.R. § 10.433(a) (2003).

¹⁵ *Rosemary A. Kayes*, 54 ECAB ____ (Docket No. 02-1397, issued January 23, 2003).

¹⁶ *William E. McCarty*, 54 ECAB ____ (Docket No. 03-308, issued April 14, 2003).

LEGAL PRECEDENT -- ISSUE 3

The Office's implementing regulation provide that, if an overpayment of compensation has been made to an individual 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.¹⁷

ANALYSIS -- ISSUE 3

In the instant case, appellant did not submit an overpayment recovery questionnaire or other financial information as the Office requested prior to the January 15, 2002 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.¹⁸ When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁹ After modifying the amount of the payment in the June 16, 2003 decision, the Office continued the repayment rate of 10 percent of appellant's income in recovering of the overpaid amount by deducting \$190.00 from his ongoing compensation payments every 28 days.²⁰

As appellant did not submit any financial information to the Office as requested. The Board finds that there is no evidence in the record to show that a recovery rate of \$190.00 every 28 days was unreasonable. He has not shown that the Office improperly required withholding \$190.00 from his continuing compensation payments every 28 days.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$10,197.64 as he received augmented compensation during the periods August 27, 1992 through January 26, 1993 and from August 1, 1993 through November 9, 1996, when he had no dependents. The Board further finds that appellant was at fault in the creation of the overpayment. The Board further finds that the Office properly required recovery of the overpayment by deducting \$190.00 from appellant's continuing compensation payments every 28 days.

¹⁷ 20 C.F.R. § 10.441(a).

¹⁸ 20 C.F.R. § 10.438 (2003).

¹⁹ *Frederick Arters*, 53 ECAB ___ (Docket No. 01-1237, issued February 27, 2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (FECA Tr. No. 94-38, September 1994).

²⁰ The Office's deduction of \$190.00 every 28 days was approximately 10 percent of appellant's continuing compensation payments at the time of the January 15, 2002 decision. To minimize hardship, the Office's procedures suggest a repayment rate of 10 percent of the claimant's income in cases where the claimants' ordinary and necessary living expenses approximately equal his or her income. This 10 percent rate is a general guideline only. Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(d)(1)(b) (September 1994). The Board notes that appellant did not provide financial information to the Office in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 16, 2003 is affirmed.

Issued: April 1, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member