



## **FACTUAL HISTORY**

On June 18, 1987 appellant then a 42-year-old aircraft mechanic, was struck in the head by a 75-pound tail hook in the performance of duty.<sup>1</sup> The Office accepted her claim for a laceration of the head and contusion of the head and shoulders, cervical muscle spasm, concussive disorder and post-traumatic stress disorder. It paid appropriate compensation.

On December 6, 1989 the Office found that appellant was recently reemployed as a light-duty worker with wages of \$576.80 per week, effective August 26, 1987, and adjusted her compensation. The Office determined that the position fairly and reasonably represented her wage-earning capacity.

By letter dated March 16, 1995, the Office informed appellant that a recent audit of her file revealed that she was not entitled to continue to receive monetary benefits at the augmented rate of pay for dependants, since her daughter turned 18 on December 7, 1990. Appellant was advised that her compensation payment would reflect the overpayment deduction of \$200.00 and the compensation rate of two-thirds for no dependants.

In a letter dated March 1, 2002, the Office advised appellant that her compensation was being reduced as she had no qualifying dependants for the augmented rate of 75 percent. She would receive compensation at the statutory rate of 66 2/3 percent. Appellant was advised that her compensation for the period February 24 to March 23, 2002 would equal the gross amount of \$2,399.00 or a net amount of \$2,362.98.

On May 20, 2002 the Office made a preliminary finding that an overpayment of \$22,771.42 had occurred. The Office informed appellant that on March 5, 1995 her compensation was reduced to the basic, 66 2/3 percent, rate as she no longer had any qualifying dependants. Appellant was advised that when "the compensation rolls expired," the Office reinstated her compensation, though there was no break in compensation, but it incorrectly input the augmented rate of 75 percent for the period December 10, 1995 to February 23, 2002. The Office had rekeyed her information when her payments were due to expire and did not rekey the information at the basic rate. The Office advised appellant that the information was rekeyed at the 75 percent rate for dependants. The Office found that appellant was without fault in the creation of the overpayment, as she had informed the Office that she had no dependants. Appellant was further informed of her right to challenge the amount of the overpayment or request a waiver of the overpayment by one of three methods including a request for a telephone conference, a request for a written review of the record, or a request for a prerecoupment hearing. If appellant wished a waiver of the overpayment, she was directed to submit financial information by completing an overpayment recovery questionnaire. Appellant did not respond.

In a decision dated April 25, 2007, the Office finalized the 2002 preliminary overpayment as to fact and amount. The Office found that appellant was without fault because she informed the Office of her change in dependant status. The Office also noted that no response was received from appellant in response to the letter of May 20, 2002 and that appellant had not requested a prerecoupment hearing, nor completed an overpayment questionnaire or

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<sup>1</sup> The record reflects that appellant had one daughter, whose date of birth was December 7, 1972.

provided any other financial information. The Office determined that the amount of \$340.80 would be withheld from appellant's continuing compensation payments beginning May 13, 2007 and the overpayment would be reabsorbed by approximately June 30, 2012.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of her duty.<sup>2</sup> 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 her monthly pay, which is known as her basic compensation for total disability.<sup>3</sup> Under section 8110<sup>4</sup> of the Act, an employee is entitled to compensation at the augmented rate of three-quarters of her weekly pay if she has one or more dependants. A child is considered a dependant 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.<sup>5</sup>

If a claimant receives augmented compensation during a period where she has no eligible dependants, the difference between the compensation she was entitled to receive at the basic, 66 2/3 percent, compensation rate and the augmented, 75 percent, rate is an overpayment of compensation.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that an overpayment of compensation has been created because appellant was paid compensation at the augmented, 75 percent, rate applicable to compensationers with dependants after she no longer had any dependants.

The record reflects that appellant had a dependant child who turned 18 on December 7, 1990. The record indicates that, on March 5, 1995, appellant's compensation was reduced to the basic, 66 2/3 percent, rate due to her no longer having any qualifying dependants.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8105(a).

<sup>4</sup> 5 U.S.C. § 8110.

<sup>5</sup> 5 U.S.C. § 8110(a)(1) and 8101(17); 20 C.F.R. § 10.405. See *Leon J. Mormann*, 51 ECAB 680 (2000). See also Federal Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.5(a) (December 1995).

<sup>6</sup> *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 dependants, she received an overpayment of compensation).

<sup>7</sup> Any overpayment incurred from December 7, 1990 to March 5, 1995 is not before the Board on the present appeal. There is no evidence that appellant's daughter was a full-time student after reaching her 18<sup>th</sup> birthday or that she otherwise qualified as a dependant after reaching age 18.

However, the Office incorrectly input the augmented rate of 75 percent into its automated compensation rolls, for the period December 10, 1995 to February 23, 2002. On May 20, 2002 the Office advised appellant of its error in its preliminary overpayment finding. Appellant was informed in the preliminary notice of the error and advised that she was not at fault as she had informed the Office that she had no dependants. However, even though she was not at fault, the Office's error caused an overpayment of compensation to appellant as appellant should only have received compensation at the basic,  $66 \frac{2}{3}$  percent, rate after her daughter reached the age of 18. The Office's failure to reduce the compensation from the augmented rate to the basic rate resulted in an overpayment to appellant. The Board will affirm the Office's April 25, 2007 decision on the issue of fact of overpayment.

The Board notes, however, that it is unclear how the Office derived the amount of the overpayment as there is no overpayment calculation sheet or other detailed documentation showing how the overpayment resulting from the Office's error amounted to \$22,771.42. While it is clear that an overpayment exists, the exact amount of the overpayment is not. To comply with Office procedure, an overpayment decision must contain a clearly written explanation indicating how an overpayment was calculated.<sup>8</sup> Consequently, the Board finds that the case is not in posture regarding the amount of the overpayment. The Board further finds that, as the amount of the overpayment may affect consideration of waiver eligibility and since there was a nearly five-year delay between the issuance of the preliminary and final overpayment determinations, the case is also not in posture for a decision with regard to whether appellant is eligible for waiver of the overpayment.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment. However, the case is not in posture regarding the amount of the overpayment or whether appellant is eligible for waiver of the overpayment.

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<sup>8</sup> *Jenny M. Drost*, 56 ECAB \_\_\_\_ (Docket No. 05-520, issued June 16, 2005). See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2 (May 2004) (when an overpayment is discovered, the Office will document the correct period of entitlement and the actual period paid and arrange for certification of the calculation; the calculation of the overpayment must be in writing in the case record and the Office should use the worksheet calculation capabilities of the Automated Compensation Payment System); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (May 2004) (the Office's preliminary decision must contain "a clearly written explanation indicating how the overpayment was calculated").

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part.

Issued: December 26, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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