

On January 11, 1996 appellant, then a 57-year-old mail handler, filed an occupational disease claim. Her claim was accepted for a herniated cervical disc and postcervical fusion C6-7. Appellant was paid compensation and medical benefits.

On September 12, 2003 appellant completed a periodic report form sent to her by the Office. She indicated that she no longer had a dependent as she was divorced on April 19, 2000. In a letter dated August 4, 2004, the employing establishment requested that the Office review appellant's file, noting that she was still receiving benefits at the augmented 75 percent level but had been divorced since April 19, 2000 and had no dependents.

On June 14, 2005 the Office issued a preliminary notice of an overpayment in the amount of \$11,980.91. The Office stated that an overpayment occurred for the period April 19, 2000 through September 4, 2004 because appellant was paid at the augmented rate of three-fourths. However, appellant was divorced on April 19, 2000 and her compensation rate should have been reduced to the two-thirds statutory rate on that date. The Office stated that she was paid \$175,655.31 for this period whereas she should have been paid \$163,674.40, resulting in an overpayment of \$11,980.91. The Office found that appellant was not at fault in the creation of the overpayment. The Office informed her of the options available to her, asked her to submit financial information and informed her that waiver could be denied if she failed to submit financial information within 30 days. Appellant did not submit any information in a timely fashion.

By decision dated August 16, 2005, the Office denied waiver of the overpayment and set up a repayment schedule of withholding \$354.00 from appellant's compensation checks beginning September 4, 2005 and continuing until the debt had been repaid.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ If the disability is total, the United States shall pay the employee during the disability monetary compensation equal to 66 2/3 percent of her monthly pay, the basic compensation rate for total disability.² Under section 8110 of the Act, entitled augmented compensation for dependents, an employee is entitled to compensation at the augmented rate of 75 percent of his or her weekly pay if he or she has one or more dependents.³

If a claimant receives augmented compensation during a period when she has no eligible dependents, the difference between the compensation she was entitled to receive at the two-thirds compensation rate and the augmented compensation received at the three-fourths rate constitutes an overpayment of compensation.⁴ When an overpayment has been made to an individual under

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8105(a).

³ *Id.* at § 8110.

⁴ *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).

this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment in the amount of \$11,980.91. Appellant indicated that she was divorced on April 19, 2000. However, she continued to receive compensation at the augmented rate of three-fourths from April 19, 2000 through September 4, 2004, whereas the rate of compensation should have been reduced to two-thirds. The Office properly calculated the amount of the overpayment. Appellant received compensation for this period in the amount of \$175,655.31 whereas she should have received compensation in the amount of \$163,674.40. Accordingly, the Office properly determined that an overpayment was made in the amount of \$11,980.91, as this was the difference between the amount of compensation she actually received and the amount of compensation she was entitled to receive.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Act, an overpayment must be recovered unless an 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.⁶ Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.⁷ However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.⁸ The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁹

The applicable regulations provide that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office.¹⁰ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in

⁵ 5 U.S.C. § 8129.

⁶ 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437, 10.441(a).

⁷ *Id.* at § 10.433(a).

⁸ *Jorge O. Diaz*, 51 ECAB 124 (1999).

⁹ 20 C.F.R. § 10.434.

¹⁰ *Id.* at § 10.436.

reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹¹

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is required to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.¹² Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.¹³

ANALYSIS -- ISSUE 2

The Office found appellant to be without fault and eligible for consideration of waiver. However, she did not timely submit any requested information regarding her financial situation. The applicable regulations provide that the individual who receives an overpayment is responsible for providing financial information and that failure to submit the requested financial information within 30 days of the request shall result in the denial of waiver.¹⁴ Appellant failed to submit any evidence showing that she needs substantially all of the current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed, as requested by the Office. Therefore, she does not qualify for waiver under the “defeat the purpose of the Act” standard.¹⁵ Further, there is no evidence in this case, nor did appellant allege, that she relinquished a valuable right or change her position for the worse in reliance on the excess compensation she received from April 19, 2000 to September 4, 2004. The Office properly denied waiver based on appellant’s failure to respond to the preliminary notice of overpayment. Pursuant to its regulations, the Office properly denied waiver of recovery of the overpayment amount of \$11,980.91.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 provides 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 hardship.¹⁶

¹¹ *Id.* at § 10.437.

¹² *Id.* at § 10.438(a).

¹³ *Id.* at § 10.438(b).

¹⁴ *Id.* at § 10.438.

¹⁵ *See Nina D. Newborn*, 47 ECAB 132 (1995).

¹⁶ 20 C.F.R. § 10.441 (1999).

ANALYSIS -- ISSUE 3

With respect to the Office's decision to deduct \$354.00 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is in accordance with section 10.441(a). In exercising its authority under section 10.441(a), the Office must take 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 Appellant did not respond to the Office's request for relevant financial information. Accordingly, the Board finds that the Office properly imposed a repayment from continuing compensation at the rate of \$354.00 every four weeks pursuant to its recovery procedures.¹⁸

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$11,980.91. The Board also finds that the Office did not abuse its discretion in denying waiver of the overpayment and in requiring repayment by deducting \$354.00 every four weeks pursuant to its recovery procedures.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2005 is affirmed.

Issued: March 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁷ *Id.*

¹⁸ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidatron*, Chapter 6.300.8 (May 2004).