

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

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**J.C., Appellant**

**and**

**U.S. POSTAL SERVICE, NORTHEAST AREA  
POST OFFICE, Windsor, CT, Employer**

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**Docket No. 06-1827  
Issued: March 6, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 7, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated February 15 and July 19, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied waiver of the overpayment in the amount of \$18,358.73.

**FACTUAL HISTORY**

On February 10, 1997 appellant, then a 36-year-old text and data services assistant, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to repetitive duties in her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant filed an additional claim for work-related stress, anxiety and depression on May 20, 2000. The Office accepted this claim for a single episode of depression and post-traumatic stress disorder. The Office paid compensation benefits based on appellant's

employment injuries; however, an overpayment of compensation arose due to an error in reporting her salary by the employing establishment. On March 10, 2003 the Office found that an overpayment in the amount of \$18,358.73 occurred, that appellant was at fault in the creation of the overpayment and that it should be recovered by withholding \$450.00 every 28 days from her continuing compensation benefits. Appellant appealed this decision to the Board. In a June 25, 2004 decision, the Board affirmed that she received an overpayment of compensation in the amount \$18,358.73, but found that appellant was not at fault in the creation of the overpayment.<sup>1</sup> The Board remanded the case for the Office to determine whether waiver of the overpayment was appropriate. The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

By decision dated August 23, 2004, the Office found that appellant was not entitled to waiver based on the financial statements and documentation dated July 5, 2002 submitted to the hearing representative. The Office stated that pursuant to the March 10, 2003 decision of the hearing representative the sum of \$450.00 would be withheld from appellant's continuing compensation benefits.

Appellant requested reconsideration on September 26, 2004 and alleged that her financial situation had worsened. She stated that the Office based its decision on an overpayment recovery questionnaire that was more than two years old and that she was submitting an additional updated form. Appellant disagreed with the hearing representative's determination regarding her monthly automobile expenses, college tuition and the amount of her compensation benefits at the time of the hearing representative's decision. She stated that the Office arbitrarily reduced her expenses and that her ordinary and necessary living expenses had increased. Appellant alleged that the \$450.00 reduction in compensation benefits would cause a severe financial hardship on her family.

On January 26, 2005 appellant returned to work as a special education tutor with wages of \$352.79 per week.

Appellant elected to receive federal disability retirement benefits rather than benefits under the Federal Employees' Compensation Act on September 4, 2005. In a letter dated October 27, 2005, the Office noted that her overpayment had been reduced to \$12,685.24 on September 30, 2005. The Office noted that appellant had not made payment on the overpayment since September 30, 2005 and informed her that appropriate deductions would be made from her retirement benefits.

In a letter dated January 23, 2006, the Office requested that appellant complete an additional overpayment recovery questionnaire. The Office allowed her 20 days to submit the form and supporting documentation. By decision dated February 15, 2006, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that appellant's reconsideration request did not contain any new evidence and that she had not submitted the overpayment recovery questionnaire requested on January 23, 2006.

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<sup>1</sup> Docket No. 03-1610 (issued June 25, 2004).

Appellant submitted an overpayment recovery questionnaire dated February 14, 2006 as well as receipts and additional financial information. She requested reconsideration on April 3, 2006 and stated that the Office received this information on February 15, 2006. The overpayment recovery questionnaire indicated that appellant, her spouse and two children had a total monthly income of \$5,453.32. She indicated that she had no cash on hand, a checking account balance of \$276.00, savings account balance of \$71.04 and credit union accounts of \$294.31. Appellant tallied expenses of \$5,771.84 including: mortgage, \$1,727.00; groceries and food, \$1,000.00; utilities and home maintenance, \$790.32; vehicle expenses, \$952.99; credit card debit of \$506.03 and miscellaneous expenses including clothing of \$795.50.

By decision dated July 19, 2006, the Office reviewed appellant's claim on the merits and found that she presented evidence of total family monthly expenses of \$5,771.84. The Office noted that appellant's monthly income was \$5,253.32 and that she had a deficit of \$318.52 per month. The Office stated, "Given that the claimant's credit card expenses were for items overlapping with expenses she reported in her monthly expense report and that the claimant reported a total of \$1,642.88 in stocks, bonds and other assets, the evidence of record is not sufficient to establish that the claimant's financial position is [such] that recovery of the \$450.00 ordered by the Office would defeat the purpose of the Act."

### **LEGAL PRECEDENT**

Section 8129(b) of the Act<sup>2</sup> provides: "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."<sup>3</sup> If a claimant is without fault in the creation of an overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 through 10.437 of the Office's regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current, ordinary and necessary living expenses, and, also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.<sup>4</sup> For waiver under the defeat the purpose of the Act standard, an appellant must meet the two pronged test and show that she

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, § 8129(b).

<sup>3</sup> 5 U.S.C. § 8129(b).

<sup>4</sup> Office procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

both needs substantially all of her current income to meet current ordinary and necessary living expenses,<sup>5</sup> and that her assets do not exceed the resource base.<sup>6</sup>

The burden is on the claimant to show that the expenses are reasonable and needed for a legitimate purpose. If the Office determines that the amount of certain expenses are not ordinary and necessary, particularly regarding the significant expenses of food, clothing and vehicles, the Office must state in writing the reasons for this finding. The finding must be supported by rationale, which may include reference to recognized research data that would show that the claimant's expenses exceed the average or range of expenses for the general population relevant to the claimant's circumstances.<sup>7</sup> The Office must be careful to avoid counting an expense twice when totaling the claimant's ordinary and necessary living expenses.<sup>8</sup>

In order to establish that recovery of an overpayment would be against equity and good conscience, an overpaid individual must either establish that she would experience a severe financial hardship in attempting to repay the debt<sup>9</sup> or overpaid individual could also establish that in reliance on such payment or on notice that such payments would be made, she gave up a valuable right or changed her position for the worse.<sup>10</sup> If the claimant is not entitled to waiver under the "defeat the purpose of the Act" clause the "against equity and good conscience" clause must be considered by the Office in the written decision.<sup>11</sup>

An individual's liquid assets include but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds and certificate of deposits.<sup>12</sup> Nonliquid assets include but are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home and furnishings/supplies including more than two vehicles in the immediate family.<sup>13</sup>

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<sup>5</sup> An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

<sup>6</sup> *W.F.*, 57 ECAB \_\_\_ (Docket No. 06-769, issued August 11, 2006).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(3) (May 2004).

<sup>8</sup> *Id.*

<sup>9</sup> 20 C.F.R. § 10.437(a).

<sup>10</sup> 20 C.F.R. § 10.437(b).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(b) (May 2004).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (May 2004).

<sup>13</sup> *Id.*

## ANALYSIS

To determine that recovery of an overpayment would defeat the purpose of the Act such that appellant is eligible for waiver of the overpayment, she must establish that she needs substantially all of her current income to meet current ordinary and necessary living expenses and that her assets exceed the resource base as determined by the Office's procedures. The Board finds that the Office failed to adequately address both aspects of the defeat the purpose of the Act test in determining that she was not entitled to waiver.

The Office's July 19, 2006 decision indicates that appellant's resource base of \$1,642.88<sup>14</sup> exceeds the adopted standard. However, the Board notes that appellant is married with two children and, therefore, must have a resource base of \$9,920.00 in order to exceed the resource base established by the Office. She fails to meet this test.

In order to require the Office to waive her overpayment as recovery would defeat the purpose of the Act, appellant must also establish that she needs substantially all of her current income to meet current ordinary and necessary living expenses. She has alleged that her expenses exceed her income by \$318.52. Appellant completed an overpayment recovery questionnaire and provided receipts and other documentation in support of her contention. In the July 19, 2006 decision, the Office discounted the discrepancy between appellant's expenses and income, based on the finding that, "the claimant's credit card expenses were for items overlapping with expenses she reported in her monthly expense report." The Office did not mention which monthly expenses, such as food or clothing, were duplicated, nor identify any specific amount duplicated in determining that appellant had income in excess of that needed for ordinary and necessary living expenses. The Office is required to provide findings of fact and a statement of reasons within its decisions.<sup>15</sup> The Office procedure manual specifically requires that it provide detailed findings and rationale regarding whether certain expenses are not ordinary and necessary. The July 19, 2006 decision fails to contain adequate findings of fact regarding the specific duplications in expense amounts as asserted by the Office.

Appellant has alleged that she and her family would experience severe financial hardship in repaying the overpayment such that repayment of the debt would be against equity and good conscience. The July 19, 2006 decision also fails to address this aspect of her claim for waiver. The Board find that the Office did not properly resolve the issues of whether appellant needed substantially all of her current income to meet current ordinary and necessary living expenses and whether she would experience severe financial hardship in attempting to repay the debt.<sup>16</sup> The case will be remanded to the Office for further development and a decision that properly resolves the waiver issue.

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<sup>14</sup> The Board is unable to determine how the Office reached this figure. Appellant listed her liquid assets as \$641.35. While she has indicated that she owns two cars, the procedural manual allows two for the immediate family.

<sup>15</sup> 20 C.F.R. § 10.126.

<sup>16</sup> Appellant did not allege that she had no personal gain from the incorrect payments, nor that she relied on her detriment on the payments.

**CONCLUSION**

The Board finds that the Office failed to provide sufficient factual findings in its July 19, 2006 decision to support the determination that appellant was not entitled to waiver of her established overpayment. The Office failed to properly determine whether repayment of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19 and February 15, 2006 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further action consistent with this decision of the Board.

Issued: March 6, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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