

<sup>1</sup> The Board notes that appellant submitted new evidence along with his request for appeal. The Board is unable to review this information as it was not part of the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On August 28, 2006 appellant, then a 31-year-old senior correctional officer, filed a traumatic injury claim alleging that his left knee was injured when his coworkers fell on it as they attempted to move an inmate. He stopped work on August 28, 2006 and received continuation of pay. On September 15, 2006 the Office accepted appellant's claim for a left knee strain. On October 23, 2006 he was placed on the periodic rolls. On December 14, 2006 appellant returned to full-time work in a light-duty position at the same rate of pay as his date-of-injury position. The Office paid him for total disability through December 23, 2006.

By letter dated January 12, 2007, the Office informed appellant that he had been overpaid in the amount of \$703.26. The Office determined that appellant was without fault in the creation of the overpayment and, therefore, eligible to seek a waiver of repayment. It provided him with the opportunity to present evidence related to any request for waiver.

On January 19, 2007 appellant requested waiver of the overpayment. He contended that he should not have to repay the overpayment because he played no part in its creation. Appellant stated that his period of total disability had caused financial hardship to his family, in part because he was paid monthly rather than biweekly. His family experienced physical and mental effects from his period of total disability. Despite having her own health problems, appellant's wife overexerted herself to make up for his limitations and was hospitalized in October 2006. On the attached overpayment recovery questionnaire, appellant stated that the family's monthly income was \$4,041.00<sup>2</sup> and monthly expenditures were approximately \$3,688.54. He reported that he and his spouse had a total of \$695.14 in their checking and savings accounts and that his wife had jointly inherited a piece of land, which was of unknown value and had not yet been divided.

By decision dated April 6, 2007, the Office denied waiver of repayment and found that a repayment of \$75.00 per month would be appropriate. The Office found that the evidence presented by appellant did not establish that he required substantially all of his current income to meet current ordinary and necessary living expenses each month. The Office stated that, because appellant did not provide the value of the land owned by his wife, it could not determine whether appellant's resource base exceeded \$8,000.00 plus \$960.00 for each of his three children. For these reasons, appellant did not meet the requirements of waiver of repayment.

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

The Federal Employees' Compensation Act<sup>3</sup> defines the limitations on the right to receive compensation benefits. Section 8116 of the Act provides that, while an employee is receiving compensation, he may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>4</sup> The implementing regulation provides that

---

<sup>2</sup> It is presumed that this sum represents their post-tax net income.

<sup>3</sup> 5 U.S.C. §§ 8101 *et seq.*

<sup>4</sup> 5 U.S.C. § 8116(a).

compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>5</sup>

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

Appellant does not contest that an overpayment of compensation was created in this case. He was placed on the periodic rolls on October 23, 2006 and received compensation every 28 days thereafter. On December 14, 2006 appellant returned to work with no loss of pay in a full-time light-duty position. The Office noted that he received compensation for wage loss through December 23, 2006. Since appellant was not entitled to compensation while working full time, the amount he received from December 14 to 23, 2006 represents an overpayment of compensation. The Office determined that appellant had been paid \$703.26 during this period and the Board finds that this represents the amount of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

When an overpayment has been made because of an error of fact or law, the Office is required to adjust it in accordance with its regulations.<sup>6</sup> Section 8129(b) of the Act 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>7</sup> 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 to 10.437 of Title 20 of the Code of Federal Regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of the Act if it 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>8</sup> To establish that recovery defeats the purpose of the Act, appellant must show that he or she needs substantially all current income to meet current ordinary and necessary living expenses and that his or her assets do not exceed the resource base.<sup>9</sup>

---

<sup>5</sup> 20 C.F.R. § 10.500.

<sup>6</sup> 5 U.S.C. § 8129(a).

<sup>7</sup> 5 U.S.C. § 8129(b).

<sup>8</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).

<sup>9</sup> See *Robert E. Wenholz*, 38 ECAB 311 (1986).

Section 10.437 provides that recovery of an overpayment is considered against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt; and when an individual, in reliance on such payments, gives up a valuable right or changes his or her position for the worse.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

As appellant was without fault in the creation of the overpayment, the Office is allowed to recover the overpayment only if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. As noted, repayment would defeat the purposes of the Act if appellant needed substantially all of his current income to meet ordinary and necessary living expenses and his assets did not exceed the resource base. Appellant stated that he and his wife had a monthly income of \$4,041.00 and monthly expenditures of \$3,688.54, leaving \$352.46 per month. The Board has held that 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.<sup>11</sup> As appellant's income exceeds his expenditures by \$352.46, the Board finds that he is not deemed to need substantially all of his current income to meet his ordinary and necessary living expenses. He also reported that he and his wife had a total of \$695.14 in liquid assets and that his wife had jointly inherited a piece of land of unknown value as it had not yet been divided. Appellant has not met the first part of the two-part test of whether recovery of the overpayment would defeat the purposes of the Act, it is not necessary for the Office to consider whether the assets of his or his wife exceed the allowable resource base.<sup>12</sup>

Recovery of the overpayment would also be improper if it were against equity and good conscience. Appellant stated that his period of disability had caused financial hardship to his family, but presented no evidence that repayment of the overpayment would present severe financial hardship. The evidence does not demonstrate that appellant relinquished a valuable right or changed his position for the worse in reliance on the overpaid compensation.

The Board finds that appellant has not shown that recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience. Therefore, the Office properly denied waiver of recovery of the \$703.26 overpayment of compensation.

With respect to the recovery of the overpayment, the Board notes that its jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits under the Act.<sup>13</sup> As the record does not indicate that appellant is receiving continuing compensation benefits, the Board does not have jurisdiction over the Office's decision to recover the overpayment by requiring appellant to remit \$75.00 per month.

---

<sup>10</sup> 20 C.F.R. § 10.437.

<sup>11</sup> *Desiderio Martinez*, 55 ECAB 245 (2004).

<sup>12</sup> *Id.*

<sup>13</sup> *Levon H. Knight*, 40 ECAB 658 (1989).

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$703.26. The Board further finds that the Office properly denied waiver of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 6, 2007 is affirmed.

Issued: October 19, 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