

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALMATIA WILLIAMSON and U.S. POSTAL SERVICE,  
POST OFFICE, Los Angeles, Calif.

*Docket No. 96-297; Submitted on the Record;  
Issued April 2, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied waiver of an overpayment of \$5,739.13, for which appellant was found to be not at fault in its creation; and (2) whether the Office properly required recovery at the rate of \$100.00 every 4 weeks.

On November 7, 1978 the Office determined that appellant sustained a low back strain on September 14, 1978 while in the performance of duty and appropriate compensation benefits were paid on the periodic rolls.

On August 2, 1995 the Office determined that appellant had received an overpayment of compensation in the amount of \$5,739.13 because health insurance costs were not being deducted from her monetary benefits for the period March 22, 1980 to July 22, 1995.

Appellant called the Office on August 10, 1995 and wanted to discuss repayment. She did not dispute the amount of the overpayment and stated that she assumed that health insurance deductions were properly being made. She provided no written information to support her request for a waiver of recovery of the overpayment and the financial information that she verbally provided supported that she had a total monthly income of \$1,759.90 and total monthly expenses of \$1,554.13. The Office calculated that this left appellant with an excess of \$205.77 per month from which to recover the overpayment.

On August 23, 1995 the Office finalized the overpayment determination finding that appellant was without fault in its creation and finding that the overpayment would be recouped by withholding \$100.00 from her continuing monetary benefits every 4 weeks. The Office noted that the figure of \$100.00 per month had been agreed upon in discussion with appellant when her request for a waiver was denied, as her monthly income exceeded her monthly expenses by more than \$50.00.

The Board finds that the Office did not abuse its discretion in denying appellant's request for waiver of recovery of the overpayment.

Section 8129(a) of the Federal Employees' Compensation Act<sup>1</sup> provides that where an overpayment of compensation has been made 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. Section 10.321(b) of Title 20 of the Federal Code of Regulations provides that where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law, such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or upon failure to make such refund, the Office may proceed to recover the same. Section 8129(b) describes the only exception to the Office's right to adjust later payments or to recover overpaid compensation:

“Adjustment or recovery by the United States may not be made when incorrect payment had 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>2</sup>

Appellant correctly argues that she was not at fault in the matter of the overpayment. However, the fact that an individual is without fault in the matter of an overpayment does not, by itself, preclude the Office from adjusting later payments or recovering the overpayment amount, as explained by section 8129(b) quoted above. This section prohibits adjustment or recovery when the individual is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience. Thus, because appellant is without fault in the matter of the overpayment, the Office may, in accordance with section 8129(b), adjust later payments or recover the overpaid amount only if adjustment or recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.322 and 10.323 of Title 20 of the Code of Federal Regulations.

Section 10.322(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and if the individual's nonexempted assets do not exceed a resource base of \$3,000.00, or \$5,000.00 if the individual has a spouse or one dependent.<sup>3</sup> Section 10.323 provides that recovery of an overpayment is considered to be against equity and good conscience if the overpaid individual would experience severe financial hardship in attempting to repay the debt, with “severe financial hardship” determined by the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* § 8129(b).

<sup>3</sup> 20 C.F.R. § 10.322(a).

same criteria set forth in section 10.322 or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.<sup>4</sup>

The Form OWCP-20 overpayment recovery questionnaire is designed to obtain the financial information necessary to determine whether adjustment or recovery would defeat the purpose of the Act.<sup>5</sup> Appellant did not submit the Form OWCP-20 the Office provided with its preliminary decision dated April 13, 1989, but she otherwise provided financial evidence; however, she failed to establish that recovery of the overpayment would defeat the purpose of the Act. Neither has she argued nor submitted evidence to establish that recovery of the overpayment would be against equity or good conscience because, in reliance on the overpaid compensation, she relinquished a valuable right or changed her position for the worse. Although appellant is without fault in the matter of the overpayment, she nonetheless bears responsibility for providing the financial information necessary to support her request to waive recovery of the overpayment. Section 10.324 of Title 20 of the Code of Federal Regulations states in this regard:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial documentation described in section 10.322<sup>6</sup> as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in the denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished.”<sup>7</sup>

Whether to waive an overpayment of compensation is a matter that rests within the Office’s discretion pursuant to statutory guidelines.<sup>8</sup> Generally, an abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, action of the kind that no conscientious person acting intelligently would reasonably have taken, prejudice, partiality, intentional wrong or action against logic.<sup>9</sup> The Board has long held that when a claimant submits no financial evidence to support her request to waive recovery of an overpayment, the Office commits no abuse of discretion in denying that request.<sup>10</sup> As appellant submitted no evidence in this case to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion in refusing to waive recovery of the overpayment.

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<sup>4</sup> *Id.* § 10.323.

<sup>5</sup> *See supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> 20 C.F.R. § 10.324.

<sup>8</sup> *See William J. Murphy*, 40 ECAB 569 (1989).

<sup>9</sup> *Sherwood Brown*, 32 ECAB 1847 (1981).

<sup>10</sup> *E.g., William J. Murphy*, *supra* note 8; *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); *Joseph H. Light*, 13 ECAB 358 (1962).

The Board further finds that the Office did not abuse its discretion in requiring recovery of the overpayment in the amount of \$100.00 every 4 weeks.

The Office's regulations provide that whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation having due regard to 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 resulting hardship upon such individual.<sup>11</sup>

In the instant case, the Office properly considered appellant's monthly income and monthly expenses, calculated that appellant had \$205.77 excess income after her reasonable and necessary expenses per month, determined that the excess exceeded the \$50.00 other expense threshold beyond her stated reasonable and necessary expenses by \$155.77 which would be available for overpayment recovery and determined that recovery at the rate of \$100.00 per 4 weeks would recover the overpayment in the least amount of time without causing undue hardship to appellant.

The Board finds that, based upon the evidence of record, the Office properly considered appellant's financial circumstances, determined that she had excess income in the amount of \$205.77 per month and determined that withholding \$100.00 per 4 weeks would recover the overpayment in the least amount of time so as to minimize the resulting financial impact upon appellant.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 23, 1995 is hereby affirmed.

Dated, Washington, D.C.  
April 2, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> *Alfonso S. Gonzalez*, 45 ECAB 200 (1993).