

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY H. LaGRAND and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Birmingham, Ala.

*Docket No. 96-533; Submitted on the Record;
Issued February 20, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant received a \$1,710.86 overpayment of compensation for the period August 13, 1994 to July 22, 1995; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to waive recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$100.00 from appellant's compensation payments every month.

The Board has duly reviewed the case record in the present case and finds that appellant received a \$1,710.86 overpayment of compensation for the period August 13, 1994 to July 22, 1995.

In the present case, appellant received augmented compensation for a dependent during the period August 13, 1994 to July 22, 1995 despite the fact that she was not entitled to receive augmented compensation for this period.¹ The record contains evidence which shows that appellant received \$15,404.00 in compensation for the period August 13, 1994 to July 22, 1995 when she was only entitled to receive \$13,693.14. Therefore, the Office properly determined, in its November 16, 1995 decision, that appellant received a \$1,710.86 overpayment.

The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.² These statutory

¹ Appellant received disability compensation due to employment-related conditions she sustained on March 26, 1990, a right elbow strain and chronic right epicondylitis. During the period August 13, 1994 to July 22, 1995, appellant received compensation at the 3/4 of salary rate rather than the 2/3 of salary rate even though her daughter had stopped being a full-time dependent on August 13, 1994 and no longer qualified as a dependent.

² See *Robert Atchison*, 41 ECAB 83, 87 (1989).

guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "Adjustment or recovery [of an overpayment] 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 this subchapter or would be against equity and good conscience."³ Since the Office found appellant to be without fault in the matter of the \$1,710.86 overpayment, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment 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 10.322 and 10.323, respectively, of the Code of Federal Regulations. Section 10.322(a) provides, generally, that recovery of an overpayment would 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, also, if the individual's assets, those which are not exempt from recovery, do not exceed a resource base of \$3,000.00 (or \$5,000.00 if the individual has a spouse or one dependent, plus \$600.00 for each additional dependent).⁴ Section 10.323 provides, generally, that recovery of an overpayment would be against equity and good conscience if: (1) the overpaid individual would experience severe financial hardship in attempting to repay the debt, with "severe financial hardship" determined by using the same criteria set forth in section 10.322; or (2) the individual, in reliance on the payment which created the overpayment, relinquished a valuable right or changed her position for the worse.⁵

Appellant has not established that recovery of the overpayment would defeat the purpose of the Act because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. Although appellant was found to be without fault in the matter of the \$1,710.86 overpayment, she nevertheless bears responsibility for providing the requisite information to support waiver of the overpayment. In this regard, section 10.324 of Title 20 of the Code of Federal Regulations provides:

"In requesting waiver of an overpayment, the overpaid individual has the responsibility for providing the financial information described in section 10.322 as well as additional information as the Office may require to make a decision with regard to the waiver of an overpayment of compensation. Failure to furnish

³ 5 U.S.C. § 8129(b).

⁴ 20 C.F.R. § 10.322(a). Section 10.322 defines the terms "income," "expenses" and "assets." 20 C.F.R. § 10.322(b), (c) and (d). For waiver under the "defeat the purpose of the Act" standard, a claimant must show both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the applicable resource base; see *George E. Dabdoub*, 39 ECAB 929, 935-36 (1988); *Robert E. Wenholz*, 38 ECAB 311, 314 (1986). An individual is deemed to need substantially all of her current income to meet ordinary and necessary living expenses if her monthly income does not exceed monthly expenses by more than \$50.00; see Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1) (September 1994); *Connie L. Potratz-Hasson*, 42 ECAB 359, 363 (1991); 20 C.F.R. § 10.323.

⁵ 20 C.F.R. § 10.323.

the information within 30 days of the request shall result in the denial of waiver and no further requests for waiver shall be entertained by the Office until such time as the requested information is furnished.”⁶

In the present case, appellant has failed to meet her responsibility for providing the requisite information to support waiver of the overpayment. The Office advised appellant regarding this responsibility, but appellant failed to submit the requested financial information. Appellant has not established that recovery of the overpayment would defeat the purpose of the Act because she has failed to submit financial information showing that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the applicable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has failed to submit financial information showing that she would experience severe financial hardship in attempting to repay the debt and has failed to submit evidence showing that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.⁷

Because appellant has failed to establish that recovery of the \$1,710.86 overpayment would defeat the purpose of the Act or be against equity and good conscience, she has failed to show that the Office abused its discretion by refusing to waive recovery of the overpayment.⁸

The Board further finds that the Office properly required repayment of the overpayment by deducting \$100.00 from appellant’s compensation payments every month.

Section 10.321 of Title 20 of the Code of Federal Regulations provides in pertinent part:

“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.”⁹

The record supports that, in requiring repayment of the overpayment by deducting \$100.00 from appellant’s compensation payments every month, the Office took into consideration the factors set forth in section 10.321 and found that this method of recovery

⁶ 20 C.F.R. § 10.324; *see John B. Moore*, 41 ECAB 804, 813-14 (1990).

⁷ *See William J. Murphy*, 41 ECAB 569, 571-72 (1989).

⁸ Appellant has alleged that she should not be required to repay the overpayment because the creation of the overpayment was not her fault. However, as noted above, a claimant who requests waiver of recovery of an overpayment must show not only that she was without fault in the creation of the overpayment, but also that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

⁹ 20 C.F.R. § 10.321(a). *See Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

would minimize any resulting hardship on appellant. As noted above, appellant failed to submit the financial information requested by the Office and the Office did not have any basis on which to find that recovering \$100.00 from appellant's compensation payments every month would cause undue financial hardship. Therefore, the Office properly required repayment of the overpayment by deducting \$100.00 from appellant's compensation payments every month.

The decision of the Office of Workers' Compensation Programs dated November 16, 1995 is affirmed.

Dated, Washington, D.C.
February 20, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member