

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL E. KORETKO and DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, Lakewood, Colo.

*Docket No. 96-1614; Submitted on the Record;  
Issued June 12, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied waiver of the overpayment that occurred in appellant's case.

On October 16, 1995 the Office issued a preliminary determination that an overpayment of \$2,338.01 occurred in appellant's case because premiums for basic life insurance coverage and for post-retirement basic life insurance coverage were not withheld from his periodic compensation. The Office found that appellant was without fault in the matter of the overpayment.

Appellant submitted an overpayment recovery questionnaire indicating that he owned a one-half nonliquid interest in a cabin worth approximately \$50,000.00.

In a decision dated February 2, 1996, the Office finalized its preliminary determination and denied waiver of the overpayment. The Office set the rate of recovery from continuing compensation at \$100.00 each compensation cycle, completing recovery by December 1997.

The Board finds that the Office properly denied waiver.

Section 8129(a) of the Federal Employees' Compensation Act<sup>1</sup> provides that when an overpayment of compensation is 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 the individual is entitled. Section 8129(b) provides the only exception to this mandatory adjustment:

“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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”<sup>2</sup>

Because appellant is without fault in the matter of the overpayment, the Office must adjust later payments if adjustment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.322(a) of Title 20 of the Code of Federal Regulations<sup>3</sup> provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid beneficiary of income and resources needed for ordinary and necessary living expenses. The Office’s procedure manual states that recovery would defeat the purpose of the Act if both of the following apply:

“(a) The individual from whom recovery is sought needs substantially all of his or her current income (including FECA monthly benefits) to meet current ordinary and necessary living expenses, and

“(b) The individual’s assets do not exceed the resource base of \$3,000 for an individual or \$5,000 for an individual with a spouse or one dependent plus \$600 for each additional dependent.”<sup>4</sup>

Under the second criterion, an individual’s assets include: (a) liquid assets, such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds, certificates of deposit and the like, and (b) nonliquid assets, such as the fair market value of an owner’s equity in property such as a camper, boat, second home and furnishings or supplies therein, any vehicles above the two allowed per immediate family, jewelry and art work. Assets do not include the value of household furnishings in the primary residence, wearing apparel, one or two vehicles, family burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income-producing property if the income from such property has been included in comparing income and expenses.<sup>5</sup>

When an individual exceeds the limits for either disposable current income or assets, on the face of it this provides a basis for establishing a reasonable repayment schedule over a reasonable, specified period of time.<sup>6</sup>

Appellant indicated on his overpayment recovery questionnaire that he owned a one-half nonliquid interest in a cabin worth approximately \$50,000.00, far exceeding the resource base of

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<sup>2</sup> *Id.* § 8129(b) (emphasis added).

<sup>3</sup> 20 C.F.R. § 10.322(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6-0200.6.a(1) (September 1994).

<sup>5</sup> *Id.*, Chapter 6-0200.6.a(4).

<sup>6</sup> *Id.*, Chapter 6-0200.6.a(1).

\$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. Accordingly, the evidence supports that recovery of the overpayment would not defeat the purpose of the Act.

Recovery of an overpayment is considered to be against equity and good conscience if an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt, with “severe financial hardship” determined by the same criteria set forth in section 10.322 above, or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.<sup>7</sup>

The issue of financial hardship has already been addressed. Further, appellant has neither argued nor submitted evidence to establish that he relinquished a valuable right or changed his position for the worse in reliance on the overpaid compensation. Accordingly, the evidence fails to show that recovery of the overpayment would not be against equity or good conscience.

Whether to recover an overpayment is a matter that rests within the Office’s discretion subject to statutory guidelines.<sup>8</sup> As the record establishes that the Office complied with applicable guidelines in finding that recovery should be made, the Board finds no abuse of discretion.

The February 2, 1996 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.  
June 12, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson

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<sup>7</sup> 20 C.F.R. § 10.323. In a rare third situation, recovery is considered to be against equity and good conscience when the individual against whom the overpayment is charged derived no personal gain from the incorrect payments and had no knowledge of the compensation benefits that were paid. Federal (FECA) Procedure Manual, Chapter 6-0200.6.b. In this case, however, the incorrect payments were paid directly to the employee, who thereby derived a personal gain.

<sup>8</sup> *Robert Atchison*, 41 ECAB 83, 87 (1989).

Member