

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA K. McMILLIAN and U.S. POSTAL SERVICES,
POST OFFICE, Clintwood, Va.

*Docket No. 96-235; Submitted on the Record;
Issued March 2, 1998*

DECISION and ORDER

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

The issues are: (1) whether an overpayment of compensation benefits was created in appellant's case in the amount of \$2,128.51; and (2) whether the Office of Workers' Compensation Programs properly denied waiver of recovery of the overpayment.

On February 20, 1995 appellant, then a 38-year-old rural carrier associate, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome which she attributed to her job. Her claim was accepted by the Office. Appellant underwent a carpal tunnel release on March 13, 1995 and a release on the left hand on April 24, 1995. She missed work intermittently from March 13 to May 13, 1995, returned to limited duty on May 15, 1995 and regular duty on June 5, 1995.

In a claim form dated May 23, 1995, appellant's supervisor noted that appellant was claiming lost wages for 69 hours for the period of April 24 through May 13, 1995.

In June 1995 appellant was placed on the short-term rolls to receive compensation benefits for temporary total disability commencing on April 2, 1995.

By letter dated June 12, 1995, the employing establishment advised the Office that appellant missed work intermittently between April 24 and May 13, 1995, returned to limited duty on May 15, 1995 and regular duty on June 5, 1995. The employing establishment advised the Office that appellant was owed lost wages for 69 hours for the period April 24 through May 13, 1995

By letter dated July 24, 1995, the Office advised appellant that it had made a preliminary determination that an overpayment of compensation benefits had occurred in her case in the amount of \$2,128.51 for the reason that appellant had received compensation benefits for 8 hours

per day for the period of April 2 through June 24, 1995¹ but was due only 69 hours of compensation for this period because she had missed work only intermittently during this period -- not eight hours each day. The Office noted that the employing establishment did not provide the actual hours worked during this period until June 12, 1995 when it was too late to alter the payments to appellant. The Office noted that appellant had been found to be without fault in the matter of the overpayment and advised her to complete an overpayment recovery questionnaire if she wished to request waiver of recovery of the overpayment.

By letter dated August 8, 1995, an Office senior claims examiner asked appellant to telephone him to arrange a telephone conference to discuss her financial circumstances and the possibility of waiver of recovery of the overpayment.

The record shows that appellant did not respond to the Office's request for financial information until after the Office's final decision was issued.

By decision dated August 28, 1995, the Office denied waiver of the recovery of the overpayment in appellant's case because appellant had failed to submit information regarding her monthly income and expenses.²

The Board finds that the Office properly determined that an overpayment was created in appellant's case in the amount of \$2,128.51.

The record shows that appellant received lost wages for temporary total disability for the period April 2 through June 24, 1995 although she had worked during part of this period and was therefore due payment for only 69 hours of lost wages for this period. As the employing establishment did not provide correct information to the Office regarding the actual hours worked by appellant between April 2 and June 24, 1995, the Office properly determined that appellant was without fault in the creation of the overpayment.

Although appellant was found to be without fault in the matter of the 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 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 the request shall result in denial of waiver, and no further requests for waiver

¹ Although the employing establishment indicated by letter dated June 12, 1995 that appellant returned to work on May 15, 1995 and missed intermittent days of work between April 24 and May 13, 1995, the record shows that the Office paid appellant for temporary total disability for the period April 2 through June 24, 1995.

² On October 12, 1995, subsequent to the Office's August 28, 1995 decision, appellant provided information concerning her monthly income and expense. However, the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

shall be entertained by the Office until such time as the requested information is furnished.”³

In the present case, appellant failed to meet her responsibility for providing the requisite information to support waiver of the overpayment prior to the Office’s August 28, 1995 decision. 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 timely 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 timely 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.⁴

Because appellant has failed to establish that recovery of the 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.

The August 28, 1995 decision of the Office of Workers’ Compensation Programs is affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

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

⁴ *See William J. Murphy*, 41 ECAB 569, 571-72 (1989).