

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HENRY G. THOMAS and DEPARTMENT OF THE ARMY,  
FORT JACKSON DFE, Fort Jackson, S.C.

*Docket No. 96-805; Submitted on the Record;  
Issued November 10, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly found that appellant received an overpayment of compensation in the amount of \$1,414.04 for the periods November 1, 1986 through February 14, 1987 and June 21, 1987 through December 17, 1988, for which he was without fault in the creation; (2) whether the Office properly denied waiver of recovery of the overpayment; and (3) whether the Office properly recovered the overpayment by withholding \$199.00 from his continuing compensation benefits.

The Board finds that the Office properly found that appellant received an overpayment of compensation in the amount of \$1,414.04 for the periods November 1, 1986 through February 14, 1987 and June 21, 1987 through December 17, 1988, for which he was without fault in the creation.

The Office of Personnel Management notified the Office that it should have begun deducting life insurance premiums for appellant effective November 1, 1986, but the Office did not begin to deduct this share of the premiums from his compensation for the periods November 1, 1986 through February 14, 1987 and June 21, 1987 through December 17, 1988. Consequently, appellant received an overpayment of compensation in the amount of \$1,414.04 for the periods November 1, 1986 through February 14, 1987 and June 21, 1987 through December 17, 1988. As appellant was not aware that these life insurance premiums were not being deducted and did nothing to cause this failure to deduct premiums, the Office properly found that he was without fault in the creation of the overpayment.

The Board further finds that the Office properly denied waiver of recovery of the overpayment.

When the Office advised appellant that a preliminary determination had been made that the overpayment existed but that appellant was without fault in its creation and could, therefore, seek waiver of recovery of the overpayment, it instructed him to submit a detailed explanation of

his reasons for seeking waiver, fully complete and submit an enclosed overpayment recovery questionnaire and attach any supporting documents. Appellant, however, indicated by phone conversation that he was unable to gather this financial information or participate in a telephone conference and he did not complete the overpayment recovery questionnaire.

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 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>

Although, appellant was not at fault in the matter of the overpayment, this 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 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>

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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).

<sup>4</sup> *Id.* § 10.323.

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 September 29, 1995 and he did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Neither has he argued or submitted evidence to establish that recovery of the overpayment would be against equity or good conscience because, in reliance on the overpaid compensation, he relinquished a valuable right or changed his position for the worse. Although appellant is without fault in the matter of the overpayment, he nonetheless bears responsibility for providing the financial information necessary to support his 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 his 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.

Finally, the Board finds that the Office properly recovered the overpayment by withholding \$199.00 from appellant’s continuing compensation benefits.

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<sup>5</sup> 20 C.F.R. § 10.324.

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

<sup>7</sup> *Id.*

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

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

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

As noted above, the Office's regulations provide that in the case of an overpayment to an individual entitled to further compensation, proper adjustment will be made by reducing subsequent payments having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and other relevant factors so as to minimize any resulting hardship upon the individual.<sup>11</sup> In this case, the record establishes that appellant failed to submit an overpayment recovery questionnaire or any other evidence, from which the Office could determine what amount appellant could afford to repay out of his continuing compensation benefits.<sup>12</sup> The Office, therefore, considered the total amount of compensation appellant was receiving and determined that \$199.00 withholding every four weeks from compensation would promptly repay the overpayment with the least amount of burden on appellant. The Board finds that the Office did not abuse its discretion in this calculation.

Consequently, the decision of the Office of Workers' Compensation Programs dated January 8, 1996 is hereby affirmed.

Dated, Washington, D.C.  
November 10, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>11</sup> 20 C.F.R. § 10.321(a); *see Roger Seay*, 39 ECAB 441 (1988).

<sup>12</sup> *See* 20 C.F.R. § 10.321(h) which provides that if additional financial information is not submitted, or a precoupment hearing is not requested, within 30 days of the Office's preliminary overpayment determination, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The overpaid individual has the responsibility for providing the financial information as the Office may require; *see Connie L. Potratz-Hasson*, 42 ECAB 359 (1991).