

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRESTON SINEGAR and U.S. POSTAL SERVICE,
POST OFFICE, Bedford Park, Ill.

*Docket No. 97-237; Submitted on the Record;
Issued October 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant received a \$540.00 overpayment in compensation; (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 payment of the overpayment by deducting \$50.00 from appellant's compensation payments every four weeks.

The Office accepted that appellant sustained an employment-related back injury and paid compensation for total disability.

By letter dated November 20, 1995, the Office advised appellant that it had made a preliminary determination that he had received an overpayment of compensation in the amount of \$540.00 which occurred when optional life insurance premiums were not deducted from his compensation for the period April 1 to August 18, 1995. The Office further advised appellant that a preliminary determination had been made that he was without fault in the creation of the overpayment. The Office requested that appellant indicate whether he wished to contest the existence or amount of the overpayment or to request waiver of the overpayment and asked him to complete an attached overpayment recovery questionnaire and submit financial documents in support thereof. Appellant did not respond and by decision dated August 28, 1996, the Office finalized its preliminary determination that appellant was without fault in the creation of the \$540.00 overpayment, that he was not entitled to waiver and that \$50.00 from continuing compensation benefits would be withheld.

The Board finds that appellant received a \$540.00 overpayment in compensation.

The record indicates that appellant elected to have optional life insurance and that his optional life insurance premiums during the period April 1 to August 18, 1995 totaled \$540.00. The record does not contain any indication that appellant canceled his optional life insurance prior to August 18, 1995 and he was obligated to have these premiums deducted from his compensation benefits during this period. These life insurance premiums were not in fact

deducted from appellant's compensation and the Office properly determined that he received a \$540.00 overpayment.

The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment after finding that appellant was without fault.

Section 8129(a) of the Federal Employees' Compensation Act provides that when an overpayment of compensation occurs "because of an error of fact or law," adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.¹ The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b):

"Adjustment or recovery 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 the Act or would be against equity and good conscience."

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment. The Office must exercise its discretion to determine whether recovery of the overpayment would "defeat the purpose of the Act or would be against equity and good conscience," pursuant to the guidelines provided in the implementing federal regulations.

Section 10.322(a) of the implementing regulations² provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses. Recovery will defeat the purpose of the Act to the extent that (1) the individual from whom recovery is sought needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expense and (2) the individual's assets do not exceed a resource base of 3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment.

In the instant case, appellant provided no financial information to the Office. The Office was therefore unable to determine whether recovery of the overpayment would defeat the purpose of the Act.

With respect to whether recovery would be against equity and good conscience, section 10.323(b) of the implementing regulations provides that "Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or notice that such payments would be made, relinquished a valuable right or changed his position for the worse." Appellant has not alleged, and the evidence does not demonstrate,

¹ 5 U.S.C. § 8129(a).

² 20 C.F.R. § 10.322(a).

that he relinquished a valuable right or changed his position for the worse in reliance on the erroneous wage-loss compensation which formed the basis for the overpayment.

As appellant has not shown that recovery would “defeat the purpose of the Act” or “be against equity and good conscience” the Board finds that the Office properly denied waiver of recovery of the overpayment.

The Board further finds that the Office properly required repayment by withholding \$50.00 from appellant’s continuing compensation payments.

Section 10.321(a)³ provides that if an overpayment of compensation has been made to one entitled to future 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.” When, as in this case, an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.⁴ The Board finds that the Office did not abuse its discretion in following those guidelines in this case.

The August 28, 1996 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

³ 20 C.F.R. § 10.321(a).

⁴ *Gail M. Roe*, 47 ECAB ____ (Docket No. 94-764, issued December 12, 1995).

A. Peter Kanjorski
Alternate Member