

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN M. ANDREWS and U.S. POSTAL SERVICE,  
POST OFFICE, Marysville, Calif.

*Docket No. 97-399; Submitted on the Record;  
Issued February 25, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant is at fault in the creation of an overpayment of compensation in the amount of \$2,357.97 for the period June 10, 1995 to June 22, 1996, which occurred because appellant received augmented compensation when she no longer had a dependent.

The Office of Workers' Compensation Programs accepted that on December 22, 1988 appellant sustained a closed head injury, laceration and coma in a single vehicle accident. She was placed on the periodic roll for receipt of compensation beginning February 6, 1989. Appellant received compensation at the augmented rate because she had a daughter in high school and then in college as a full-time student.

On April 8, 1993 appellant completed a Form CA-1032 stating that she no longer had a dependent which would entitle her to augmented compensation. On May 4, 1994 appellant completed a Form CA-1032 stating that she had no dependent which would entitle her to augmented compensation. On February 1, 1995 appellant completed a Form CA-1032 leaving the dependent question blank. The Office, however, did not decrease her periodic compensation payments in response to the change in claimed dependency status on the CA-1032s.

Appellant remained entitled to augmented compensation until June 9, 1995 when appellant's daughter ceased being a full-time student in college. However, appellant continued to received compensation for the period June 10, 1995 to June 22, 1996 at the augmented rate, despite the fact that her daughter ceased to be a full-time college student on June 9, 1995.

On a Form CA-1032 dated June 3, 1996 appellant responded that she had no dependent which would entitle her to augmented compensation. The Office decreased appellant's compensation in response to that form.

By notice dated September 10, 1996, the Office made a preliminary determination that appellant was at fault in the creation of an overpayment in the amount of \$2,357.97 for the period June 10, 1995 to June 22, 1996 because she received augmented compensation during that period yet was not entitled to such compensation as her daughter ceased being a full-time college student on June 9, 1995. The Office found that appellant was at fault because she completed annual CA-1032 forms indicating that she did not have any dependents “back to 1994,” but kept receiving compensation that never decreased, and that she should have been aware that because her compensation never decreased, she was still being paid for having a dependent.

On September 20, 1996 appellant completed an overpayment recovery questionnaire stating that due to the type of accident she had, she did not recall when the conditions under which payments were made, and the requirements to report changes, were first explained to her, and that she had no way of making the type of judgment required to determine whether the overpaid amount was due her. Appellant claimed that she was not at fault in the creation of the overpayment as she advised the Office in 1994 of her dependency change.

By decision dated October 16, 1996, the Office finalized its overpayment and fault determination finding that appellant should have been aware that she was not entitled to augmented compensation, as per her annual completion of Form CA-1032, since her compensation never decreased but only increased.

The Board finds that appellant was at fault in the creation of the \$2,357.97 overpayment for the period June 10, 1995 to June 22, 1996, which occurred because appellant received augmented compensation when she no longer had an eligible dependent.

Section 8129 of the Federal Employees’ Compensation Act<sup>1</sup> provides that an overpayment of compensation shall be recovered by the Office unless “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, before the Office may recover an overpayment of compensation, it must determine whether the individual is without fault.

Section 10.320 of the implementing federal regulations<sup>2</sup> provides the following:

“In determining whether an individual is with fault, the Office will consider all pertinent circumstances including age, intelligence, education and physical and mental condition. An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.1 *et seq.*

(2) Failed to furnish information which the individual knew or should have known to be material; or

(3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.”

In this case, the Office applied the third standard in determining that appellant was at fault in creating the overpayment. In order for the Office to establish that appellant was with fault in creating the overpayment of compensation, the Office must establish that at the time appellant received the compensation checks, covering the periods June 10, 1995 to June 22, 1996, she knew or should have been expected to know that these checks were incorrect. The Office established that, as of 1994 when appellant completed her annual Form CA-1032, she was no longer claiming augmented compensation for a qualifying dependent, and concluded that she no longer should have reasonably expected compensation paid at the augmented rate. The Office found that, as no reduction in compensation occurred, appellant should have been expected to know that the payment she was receiving was incorrect. As appellant kept and cashed these incorrect compensation checks, after advising the Office she no longer had dependents, she accepted payments that she knew or should have been expected to know were incorrect. Accordingly, the Office properly found appellant to be with fault in the overpayment creation.

As early as 1993 appellant did not claim augmented compensation for having a dependent. The Board finds that appellant knew or should have been expected to know that the compensation payments issued after her notification to the Office were incorrect, with respect to the period she had no qualifying dependent, June 10, 1995 to June 22, 1996.

Consequently, the Office finding of fault was correct and the overpayment will be recovered as determined by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 16, 1996 is hereby affirmed.

Dated, Washington, D.C.  
February 25, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member