

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NETTIE I. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, N.C.

*Docket No. 97-1594; Submitted on the Record;
Issued February 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly found that appellant was at fault in the creation of a \$23,102.09 overpayment in compensation; and (2) whether the Office properly pursued collection of the full amount of the overpayment of compensation.

On February 6, 1989 appellant, then a 47-year-old casual clerk, sustained an employment-related fracture of the right wrist with carpal tunnel syndrome and temporary aggravation of degenerative disc disease at C5-6, for which she received appropriate continuation of pay and compensation. She was placed on the periodic rolls, effective September 18, 1989. On February 23, 1990, January 11, 1991, February 10 and December 7, 1992, and December 4, 1993 appellant completed Forms CA-1032, in which she indicated that she had not been employed or self-employed during each of the previous 15 months. In a report submitted on January 24, 1995, the employing establishment informed the Office that appellant had been employed by the Rockingham County Council on Aging, which included the periods covered by the Forms CA-1032 filed by appellant.

On March 23, 1995 appellant signed a plea agreement acknowledging that she had knowingly made a false statement representing that she had been unemployed for the periods covered by the Forms CA-1032 dated January 11, 1991, December 7, 1992 and December 4, 1993 when, in fact, she had been employed. By decision dated April 28, 1995, the Office terminated appellant's compensation, on the grounds that she had knowingly committed a fraud. On June 22, 1995 appellant was sentenced to a 5-year term of probation and a \$25.00 special assessment. Restitution in the amount of \$3,000.00 was ordered by the Court.

By letter dated October 6, 1995, the Office informed appellant that it had made a preliminary determination that she had received a \$23,102.09 overpayment of compensation for the periods October 18, 1989 through January 11, 1991 and September 7, 1991 through December 4, 1993. The Office stated that it had found appellant at fault in the creation of the overpayment because she had knowingly engaged in work activity without notifying the Office

as required by the Federal Employees' Compensation Act.¹ By decision dated May 14, 1996, the Office finalized the overpayment decision.

The record in this case, indicates that appellant was gainfully employed for the period October 31, 1990 to March 15, 1993. The record further indicates that during the periods October 18, 1989 through January 11, 1991 and September 7, 1991 through December 4, 1993 she received compensation in the amount of \$23,102.09.

The Board finds that the Office properly determined that appellant was at fault in creating the overpayment of compensation in the amount of \$23,102.09 for these periods and, therefore, the overpayment for that period was not subject to waiver.

Section 8129 of the Act 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."² Thus, the Office may not waive the overpayment of compensation in this case unless appellant was without fault.³

In determining whether an individual is with fault, section 10.320(b) of the Office's regulations provides in relevant part:

"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
- (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.⁴

With respect to whether an individual is without fault, section 10.320(c) of the Office's regulations provides in relevant part:

"Whether an individual is 'without fault' depends on all the circumstances surrounding the overpayment in the particular case. The Office will consider the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with reporting requirements, opportunities to comply with reporting requirements, understanding of the obligation to return

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8129.

³ See *Linda E. Padilla*, 45 ECAB 768 (1994).

⁴ 20 C.F.R. § 10.320(b).

payments which were not due and ability to comply with any reporting requirements (e.g., age, comprehension, memory, physical and mental condition).”⁵

Based on the forfeiture of her right to compensation for the periods October 18, 1989 through January 11, 1991 and September 7, 1991 through December 4, 1993, appellant received an overpayment in compensation for these periods. The Board finds that she was at fault in the creation of the overpayment under both the first and second standards described in section 10.320(b) above, as the record establishes that she was gainfully employed during this period and knowingly stated that she was not employed or self-employed. She thus failed to furnish material information to the Office.

The Board further finds that the Office did not err in pursuing collection of the full amount of the overpayment of compensation.

As appellant’s plea agreement does not indicate that the restitution amount would be in “full satisfaction” of the debt owed the United States, *i.e.*, that it was a “global settlement,” the Office was not precluded from continuing to pursue collection of the full amount of the debt.⁶

Finally, the Board notes that it has no jurisdiction to review the discretionary authority of the Office with regard to the method of recovery provided under the Debt Collection Act where, as in this case, appellant has no continuing compensation under the Federal Employees’ Compensation Act.⁷

The decision of the Office of Workers’ Compensation Programs dated May 14, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 23, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski

⁵ 20 C.F.R. § 10.320(c).

⁶ *Clarence D. Ross*, 42 ECAB 556 (1991).

⁷ *See Paul K. Raditch*, 43 ECAB 738 (1992); *Robert N. Vachon*, 36 ECAB 502 (1985).

Alternate Member