

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM O. McDERMITH and DEPARTMENT OF THE INTERIOR,  
FISH & WILDLIFE SERVICE, NATIONAL WILDLIFE REFUGE, Monte Vista, CO

*Docket No. 98-632; Submitted on the Record;*

*Issued July 19, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to waive recovery of an overpayment of compensation in the amount of \$183.15.

The Office accepted that appellant's March 23, 1992 employment injury resulted in a herniated nucleus pulposus and began paying him compensation for temporary total disability on May 14, 1992. On September 29, 1997 the Office issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$183.15 which arose because the Office did not deduct premiums for appellant's optional life insurance during the period from September 4, 1994 to February 3, 1996. The Office also preliminarily found that appellant was without fault in the matter of the overpayment. By decision dated November 18, 1997, the Office found that appellant received an overpayment of compensation in the amount of \$183.15 which arose because the Office did not deduct premiums for appellant's optional life insurance during the period from September 4, 1994 to February 3, 1996. The Office refused to waive recovery of this overpayment.

The Board finds that the case is not in posture for a decision, as the Office did not consider the evidence submitted by appellant in support of his request for waiver of the overpayment.

On November 5, 1997 appellant completed an Office overpayment recovery questionnaire, on which he indicated that his monthly expenses exceeded his monthly income. This questionnaire is marked by the Office as received on November 10, 1997. The Office's November 18, 1997 decision, however, contains no reference to the questionnaire, which is placed in the case record after the Office's decision. The Office's November 18, 1997 decision states that the reasons for denial of waiver are shown on an enclosed memorandum, but the case record contains no such memorandum. The Board can only conclude that the Office did not consider appellant's November 5, 1997 overpayment recovery questionnaire in rendering its November 18, 1997 decision.

Since the Board's jurisdiction of a case is limited to reviewing the evidence which was before the Office at the time of its final decision,<sup>1</sup> it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,<sup>2</sup> it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of its final decision be addressed by the Office.<sup>3</sup>

The decision of the Office of Workers' Compensation Programs dated November 18, 1997 is set aside and the case remanded to the Office for consideration of appellant's overpayment recovery questionnaire, to be followed by an appropriate decision whether recovery of the overpayment of compensation in the amount of \$183.15 should be waived.

Dated, Washington, D.C.  
July 19, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>1</sup> 20 C.F.R. § 501.2(c).

<sup>2</sup> 20 C.F.R. § 501.6(c).

<sup>3</sup> *William A. Couch*, 41 ECAB 548 (1990).