

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN E. SHEDD and DEPARTMENT OF THE ARMY,
TOOELE ARMY DEPOT, Tooele, Utah

*Docket No. 97-2251; Submitted on the Record;
Issued June 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation occurred in the amount of \$5,381.08 for the period December 21, 1995 through February 1, 1997; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly required repayment by withholding \$350.00 every four weeks from her continuing compensation.

On January 9, 1995 appellant, then a 42-year-old division chief and equipment manager, filed a notice of traumatic injury, alleging that on May 25, 1993 she suffered a traumatic brain injury, fractured both feet, fractured her jaw, crushed discs in her neck and back, and lost feeling in her dominant left hand and arm when her vehicle was struck by a truck in the course of her federal employment.

On February 14, 1995 the Office accepted the claim for a head injury; cervical, thoracic, and lumbar strains; bone fragment, left foot with surgery done in January 1994; post-traumatic stress disorder and post-concussion syndrome.

On March 7, 1995 appellant filed a claim for compensation, Form CA-7, indicating that she had three dependents. These dependents included her husband, a daughter born March 31, 1973 and a son born May 30, 1976. On April 7, 1995 appellant provided the same information on another Form CA-7.

On May 18, 1995 the Office placed appellant on the periodic rolls to receive compensation for total temporary disability. Appellant received compensation at an augmented rate because she had one or more dependents. The Office advised appellant to inform it if there was a change in the status of any dependents. Appellant acknowledged the Office's letter on May 28, 1995.

The Office sent yearly questionnaires in order to determine whether appellant should continue to receive benefits or whether her benefits should be adjusted. On May 31, 1996 appellant completed such a questionnaire and indicated that her husband was no longer a

dependent because they divorced on December 20, 1995. Appellant stated that her daughter, Mindy Ahlstrom, a 23-year-old and her son, Griffin Ahlstrom, a 20-year-old, both qualified as dependents because they were full-time students.

On July 2, 1996 the Office wrote to appellant requesting further information regarding Griffin Ahlstrom's status as a full-time student. The Office indicated that appellant could not receive augmented compensation unless her son was pursuing a full-time course of study or training.¹ The Office provided a student verification, Form 1618, for appellant to complete.

On February 2, 1997 the Office stopped paying augmented benefits and reduced appellant's compensation benefits from the augmented rate of three-fourths of her regular pay to a rate of two-thirds.

On February 14, 1997 the Office indicated that it never received a response to its July 2, 1996 request for the student verification of Griffin Ahlstrom. It stated that for that reason appellant's compensation rate was reduced to two-thirds. The Office also informed appellant that she would owe an overpayment.

The Office subsequently calculated the amount of the overpayment. The Office noted that appellant divorced on December 20, 1995 and that no student verification forms were submitted. Relying on its daily computation logs, the Office indicated that appellant received augmented benefits from December 21, 1995 through February 1, 1997 in the amount of \$47,258.21. Appellant was only entitled to nonaugmented benefits totaling \$41,877.13 for this period. The Office, therefore, found that an overpayment of \$5,381.08 existed.

On March 7, 1997 the Office indicated that it talked to appellant's son and requested a student verification form. The Office subsequently sent appellant another student verification form.

On April 17, 1997 the Office advised appellant that it had made a preliminary determination that she received an overpayment in the amount of \$5,381.08 from December 21, 1995 through February 21, 1997 because she received compensation at the augmented three-fourths rate yet she had no dependents. The Office indicated that appellant was not at fault in the matter. In an accompanying memorandum, the Office noted that appellant's head injury affected her memory and, therefore, she could not be found at fault. Appellant was given 30 days to submit additional argument or evidence. The Office also provided an overpayment recovery questionnaire.

By decision dated May 20, 1997, the Office finalized its preliminary determination that an overpayment in the amount of \$5,381.08 had been created. The Office required repayment by withholding \$350.00 every four weeks from appellant's continuing compensation. In an accompanying memorandum, the Office indicated that appellant's head injury rendered her without fault in the creation of the overpayment. The Office also indicated that appellant failed to respond to its preliminary decision concerning the overpayment.

¹ Appellant's daughter no longer qualified as a dependent based on her status as a full-time student because she had attained 23 years of age.

The Board finds that appellant received an overpayment of compensation in the amount of \$5,381.08 due to her receipt of augmented compensation benefits from December 21, 1995 through February 1, 1997 when she had no eligible dependents.

Appellant began receiving augmented benefits on the automatic rolls on May 18, 1995. In her claims for compensation, Forms CA-7, dated March 7, 1995 and April 7, 1995 appellant listed her husband, George and her children, Griffin and Mindy Ahlstrom as dependents. Both children were then over age eighteen. Upon her divorce on December 20, 1995, George ceased to be appellant's husband and was no longer a dependent.² Pursuant to section 8110(a) of the Act,³ children over the age of eighteen only qualify as dependents if they are incapable of self-support because of physical or mental disability or if they qualify as students as defined in section 8101 of the Act. Appellant, however, failed to submit any evidence indicating that her children were either incapable of self-support because of physical or mental disability or that they were students as defined in section 8101 of the Act. The Office advised appellant of the deficiency of the evidence, but appellant failed to respond. Appellant, therefore, failed to establish that either Griffin or Mindy Ahlstrom qualified as dependents. Because appellant no longer had any dependents after December 20, 1995 she should not have received augmented benefits from that date until such benefits ended on February 1, 1997. The Office's daily computation logs indicated that during the period December 21, 1995 through February 1, 1997 appellant received augmented benefits totaling \$47,258.21. The Office further calculated that appellant's nonaugmented benefits during this same period would have totaled \$41,877.13. The Office, therefore, properly concluded that appellant received an overpayment of \$5,381.08.

The Board additionally finds that the Office properly denied waiver of recovery of the overpaid compensation.

In the instant case, the Office provided appellant with an overpayment recovery questionnaire with its preliminary notice of an overpayment dated April 17, 1997 and requested a response within 30 days. Appellant failed to complete the financial questionnaire or otherwise responded to the Office within the 30-day period. Pursuant to 20 C.F.R. § 10.324, an overpaid individual has the responsibility for providing financial information with respect to waiver within 30 days of the Office's request or waiver shall be denied. Inasmuch as appellant failed to submit her financial information within 30 days of the Office's request, waiver was properly denied.⁴

The Board also finds that the Office properly required repayment by withholding \$350.00 every month from his continuing compensation.

² 5 U.S.C. § 8110(a)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.324.

The Office's implementing regulations provide:

“Whenever an overpayment has been made to an individual who is entitled to further 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.”⁵

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 her continuing compensation benefits.⁶ The Office, therefore, considered the total amount of compensation appellant was receiving and determined that a \$350.00 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.

The decision of the Office of Workers' Compensation Programs dated May 20, 1997 is affirmed.

Dated, Washington, D.C.
June 16, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁵ 20 C.F.R. § 10.321(a); *see Roger Seay*, 39 ECAB 441 (1988)

⁶ *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).