

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA L. CASEBOLT and U.S. POSTAL SERVICE,
POST OFFICE, Fair Play, MO

*Docket No. 98-881; Submitted on the Record;
Issued November 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received a \$3,274.20 overpayment in compensation benefits; and (2) whether the Office properly denied appellant's request for waiver of recovery of the overpayment.

On August 23, 1994 appellant, then a 51-year-old rural letter carrier, filed a claim for neck, right shoulder and right arm pain which she related to casing mail and placing mail in mailboxes on her 103-mile route. The Office accepted appellant's claim for cervical strain and authorized buy back of leave and paid temporary total disability compensation for intermittent periods. The employing establishment subsequently offered appellant a limited-duty position at another employing establishment which she accepted.

In a July 10, 1997 letter, the Office informed appellant that an overpayment of \$3,274.20 had occurred in her case for the period May 1, 1995 through January 4, 1996. The Office indicated that appellant had received reimbursement for travel between her employing establishment and the location of her limited-duty position that the employing establishment had offered to her and she had accepted. The Office indicated that appellant was entitled to travel reimbursement only for medical appointments for her work-related condition. It stated that mileage for travel is not paid for travel to and from work even if the duty station was different than her regular duty station. The Office informed appellant that it had found she was without fault in the matter of the overpayment because her union had informed her that she was entitled to travel expenses to and from her limited-duty position. The Office indicated that when a claimant is found to be without fault in the occurrence of the overpayment, the Federal Employees' Compensation Act states that, recovery of the overpayment may not be made if it could be shown that such recovery would defeat the purpose of the Act or would be against equity and good conscience. The Office stated that the purpose of the Act was to provide at least a subsistence income to beneficiaries. It indicated that it would be against equity and good conscience to recover overpayments in such circumstances as when a claimant, acting on

erroneous information from the government relinquished a valuable right or entered into certain transactions which she otherwise would not have undertaken and suffers a financial loss as a result. The Office instructed appellant to complete an enclosed overpayment recovery form and submit supporting documentation. The Office indicated that the financial information would assist the Office in determining whether to waive recovery of an overpayment if the claimant was not at fault or in deciding how to recover an overpayment if the claimant was at fault or waiver of recovery of the overpayment was denied. The Office stated that failure to furnish the requested financial information would result in denial of any request for waiver of recovery of the overpayment. In a July 8, 1997 response, appellant requested waiver of recovery of the overpayment. In a November 4, 1997 decision, the Office found that appellant had received a \$3,274.20 overpayment in compensation and denied her request for waiver of recovery of the overpayment.

The Board finds that appellant received a \$3,274.20 overpayment in compensation.

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Act.¹ Section 8103 provides that an employee “may select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instruction as the Secretary considers necessary....”² Section 8103 also provides that an employee receiving medical benefits for an employment injury may also receive necessary and reasonable transportation and expenses incident to securing the medical benefits furnished in accordance with section 8103. There is no other provision under the Act for payment of transportation or travel expenses. Therefore, travel expenses under the Act are payable only for the travel that is reasonable and necessary to undergo an examination or therapy, have a prescription filled or other travel related to receiving medical expenses for an accepted employment-related condition. Appellant, therefore, was not entitled to have the Office pay travel expenses for travel from her regular duty station to another duty station at which she is working due to her employment-related condition.

The Board further finds that the Office properly denied appellant’s request for waiver of recovery of the overpayment.

Recovery of an overpayment may be waived if recovery would defeat the purpose of the Act or would be against equity and good conscience. The purpose of the Act has been defined as providing at least a subsistence income to beneficiaries under the Act. To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, the first test under 5 U.S.C. § 8129(b) as specified in 20 C.F.R. § 10.322(a) provides as follows:

“(a) *General.* 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

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8103.

expenses under the criteria set out in this section. Recovery will defeat the purpose of this subchapter to the extent that:

“(1) The individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

“(2) The individual’s assets do not exceed the 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 claimant’s assets not exempted from recoupment in paragraph (d) of this section. The first \$3,000.00 or more depending on the number of the claimant’s dependents is also exempted from recoupment.”³

In *Robert E. Wenholz*,⁴ the Board found that the guidelines for recovery of an overpayment from an individual who is without fault, as set forth in section 10.322(a)(1) and (2) were meant to read conjunctively and that the overpaid individual must meet both conditions to find that recovery of the overpayment should be waived on the basis that it would defeat the purpose of the Act. Consequently, to establish that recovery would defeat the purpose of the Act, the facts must show that appellant needs substantially all of her income to meet her current ordinary and necessary living expenses and also that her assets, those which are not exempted, do not exceed a resource base of \$3,000.00 (or \$5,000.00 with a spouse or dependent).

Appellant, in her overpayment recovery form, indicated that she and her husband had monthly income of \$1,225.00 in social security benefits, \$850.00 in pension and state workers’ compensation benefits, \$2,170.00 in earnings and \$20.00 in interest for a total income of \$4,240.00. She reported that she had monthly expenses of \$606.00 in rent or mortgage, \$600.00 in food, \$100.00 in clothing, \$240.00 in utilities and \$1,800.00 miscellaneous expenses which included a 10 percent contribution of income to their church. Appellant also noted that they had a \$5,931.00 loan on which they paid \$329.32 a month. She indicated that her total monthly expenses, therefore, totaled \$3,675.32. She reported that she and her husband had total assets of \$8,382.30, including \$7,785.00 in a savings account. Appellant’s monthly income exceeds her monthly expenses by approximately \$565.00. She, therefore, does not need substantially her entire monthly income to meet her expenses. She also has total assets exceeding \$5,000.00. Appellant, therefore, is not entitled to waiver of recovery of the overpayment on the grounds that recovery of the overpayment would defeat the purpose of the Act.

With regard to whether recovery of the overpayment is against “equity and good conscience,” 20 C.F.R. § 10.323 provides as follows:

“(a) Recovery of an overpayment is considered to be ‘against equity and good conscience’ when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria

³ 20 C.F.R. § 10.322(a).

⁴ 38 ECAB 311 (1986).

to be applied in determining severe financial hardship are the same as in section 10.322.

“(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual’s present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual’s position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits....”

Appellant stated that the employing establishment, in a bulletin, indicated that mileage would be paid for travel to temporary duty assignments and her position had been described as a temporary duty assignment. She related that she had been instructed to send all requests for payment to an Office claims examiner. Appellant contended that someone should have realized sooner that she was not entitled to reimbursement for the travel expenses. She noted that in her position she drove over 105 miles a day, including 75 to 80 miles of gravel roads. Appellant indicated that she had two cars because she needed a spare car if one car needed repairs. She stated that if she had known she was not entitled to mileage, she would have sold one of her vehicles. Appellant indicated that as a rural carrier she received over \$700.00 a month in mileage to pay her expenses. When she went off the road, she still had to pay \$627.18 a month in car payments. She eventually sold one vehicle to her replacement. Appellant, however has not established that the erroneous information led her to relinquish a valuable right based on the payment or notice of payment of compensation. Her decision to have two vehicles was based on her job and the mileage she received in her job, not on the receipt of reimbursement of travel expenses by the Office. Appellant also was able to sell one vehicle with no indication that she sustained a severe financial loss in the sale of the vehicle. She had not established that she had changed her position for the worse or that any change was due to the receipt of compensation. Appellant, therefore, is not entitled to waiver of recovery of the overpayment due to equity and good conscience. The Office properly denied appellant’s request for waiver of recovery of the overpayment.

The decision of the Office of Workers' Compensation Programs, dated November 4, 1997, is hereby affirmed.

Dated, Washington, D.C.
November 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member