

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEREMIAH RANIERI and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

*Docket No. 98-661; Submitted on the Record;
Issued October 21, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was not without fault in the creation of a \$44,773.89 overpayment of compensation; and (2) whether the Office properly denied appellant's request for reconsideration.

The case has been on appeal twice previously.¹ In a January 26, 1993 decision, the Board found that the Office had improperly determined that appellant had forfeited compensation for the period March 11, 1971 through April 6, 1990 and was not without fault in the creation of a \$185,763.31 overpayment of compensation. The Board indicated that appellant forfeited compensation for the periods in which he worked for Globe Security, the New York Board of Education and New York University and did not report such employment to the Office. The Board, however, found that the Office had not established by direct or documentary evidence that appellant worked at any other time for himself or for other employers. The Board remanded the case for the Office to redetermine the periods of forfeiture of compensation and the amount of the overpayment. In an August 28, 1997 decision, the Board found that, while the Office had established that appellant forfeited compensation for the periods April 20, 1981 through July 20, 1982 and from March 21, 1988 through March 30, 1990, it had not established that appellant worked for Globe Security during the period June 1975 to June 1977 and therefore forfeited compensation for the period March 26, 1974 through June 26, 1975. The Board therefore modified the Office's decision to find that appellant forfeited compensation for the periods April 20, 1981 through July 20, 1982 and March 21, 1988 through March 30, 1990 and affirmed the Office's decision as modified.

In a December 11, 1997 decision, the Office found that appellant had received an overpayment of \$44,773.89 for the periods of April 20, 1981 through July 20, 1982 and

¹ Docket No. 95-1032 (issued August 28, 1997); Docket No. 92-311 (issued January 26, 1993). The history of the case is contained in the prior decisions and is incorporated by reference.

March 21, 1988 through March 30, 1990. The Office noted that \$25,000.00 had previously been recovered in restitution made by appellant when he pleaded guilty to one count of mail fraud in connection with failure to report his employment to the Office. The Office indicated that the remaining overpayment amount, therefore, was \$19,773.89.

In a December 17, 1997 letter, appellant requested reconsideration of his case because of his spinal disability. He noted that he was currently receiving \$365.00 a month in social security disability benefits. Appellant commented that it would, therefore, be virtually impossible for him to repay the overpayment. He also requested that the amount of the overpayment be reduced in his settlement and an installment payment plan be established. In a January 9, 1998 decision, the Office denied appellant's request for reconsideration due to his "spinal disability" on the grounds that he had neither raised substantive legal questions nor included new and relevant evidence relative to his claim.

The Board finds that the Office properly determined that appellant was not without fault in the creation of the overpayment.

The Board has previously found that the Office properly determined that appellant was subject to forfeiture for failure to report periods of employment to the Office while receiving compensation. Therefore, the issue before the Board on this appeal is whether the Office properly determined that appellant was not without fault in the creation of the overpayment that arose from the forfeiture of compensation. Section 8129(a) of the Federal Employees' Compensation Act provides, "Adjustment of recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment of recovery would defeat the purpose of the Act or would be against equity and good conscience."² Accordingly, no waiver of an overpayment is possible if the claimant is with fault in helping to create the overpayment.

In determining whether an individual is with fault, section 10.320(b) of the Office's regulations provide 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."³

² 5 U.S.C. § 8129(b).

³ 20 C.F.R. § 10.320(b).

In this case, the Office applied the second standard in determining that appellant was at fault in creating the overpayment.

Appellant was instructed in the CA-1032 forms to report any employment, including self-employment in the 15-month period prior to the date of the form. In his July 20, 1982 CA-1032 form, appellant noted his employment injury and his attempt to return to work but did not report his employment at Globe Security from January to May 1982. In the June 21, 1989 and March 30, 1990 CA-1032 forms, appellant stated that the question on employment was not applicable to him, thereby failing to report his employment as a substitute teacher and his job with New York University. Appellant therefore failed to report information that he knew was material, namely his employment with Global Security, the New York Board of Education and New York University. He, in his guilty plea and in his testimony at the June 21, 1991 hearing before an Office hearing representative, admitted that he had not reported this information. The Office properly found that appellant was not without fault in the creation of the overpayment. Therefore, appellant is not entitled to consideration of a waiver of recovery of the overpayment.

The Board also finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁶

In this case, appellant requested that his claim be reopened to consider his "spinal disability." The Office, in a January 29, 1991 decision, suspended appellant's compensation effective March 10, 1991, for refusal to undergo a medical examination as ordered by the Office. The Office has not issued any decision on whether appellant remains disabled due to the effects of his accepted employment injury of March 6, 1968. Appellant has not submitted any new evidence or legal argument on whether the suspension of his compensation was proper. He, by his failure to submit new evidence or legal arguments, has not shown any basis to seek reconsideration of his claim. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁷ There is no evidence that the Office has abused its discretion in this case.

The decisions of the Office of Workers' Compensation Programs, dated January 9, 1998 and December 11, 1997, are hereby affirmed.

Dated, Washington, D.C.
October 21, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).