

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ILLINE BLIZZARD and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 97-2496; Submitted on the Record;
Issued September 24, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied waiver of recovery of the overpayment in this case; and (2) whether the Office properly required recovery of the overpayment by withholding \$50.00 each four weeks from appellant's continuing compensation payments.

On June 28, 1990 appellant, then a 60-year-old warehouse worker, sustained an aggravation of degenerative disc disease in the performance of duty.

On May 14, 1991 the Office placed appellant on the periodic compensation rolls effective December 26, 1990.

By letter dated September 20, 1994, appellant advised the Office that her husband had died on July 29, 1994 and she enclosed a copy of the death certificate.

By letter dated February 8, 1996, the Office advised appellant that her compensation rate would be reduced from three-fourths to two-thirds because she no longer had any eligible dependents following the death of her husband.

In a disability benefit payment worksheet dated January 7, 1997, the Office noted that appellant had ceased having a dependent on July 29, 1994 but she had received three-fourths pay from July 30, 1994 through February 3, 1996 rather than the correct two-thirds rate, resulting in an overpayment in the amount of \$3,589.02.

By letter dated January 27, 1997, the Office advised appellant that it had made a preliminary determination that an overpayment of compensation had occurred in appellant's case in the amount of \$3,589.02 and that the overpayment occurred because appellant was paid compensation at the augmented three-fourths rate from July 30, 1994 through February 3, 1996 when she should have been paid at the basic two-thirds rate because her husband had died on July 29, 1994 leaving her with no dependents. The Office stated that a finding had been made

that appellant was without fault in the matter of the overpayment. Appellant was advised that if she disagreed with the fact or the amount of the overpayment she should submit evidence including financial documents regarding her income and her expenses.

In an undated letter received on February 19, 1997, appellant requested waiver of the overpayment of compensation and submitted a completed overpayment questionnaire (Form OWCP-20) dated February 14, 1997.

By letter dated March 12, 1997, appellant submitted additional financial documentation.

By decision dated March 24, 1997, the Office determined that an overpayment had occurred in appellant's case in the amount of \$3,589.02 because she was paid compensation at the augmented three-fourths rate from July 30, 1994 through February 3, 1996 when she should have been paid at the basic two-thirds rate because her husband had died on July 29, 1994 leaving her with no dependents. The Office also determined that the circumstances of appellant's did not warrant waiver of recovery of the overpayment and the Office stated that the amount of \$50.00 would be withheld from her continuing compensation benefits effective March 30, 1997.

The Board finds that the Office properly denied waiver of recovery of the overpayment in the amount of \$3,589.02.

In the present case, appellant has not alleged that she did not receive an overpayment of compensation in the amount of \$3,589.02 for the period July 30, 1994 to February 3, 1996. Rather, appellant has alleged that she was improperly denied waiver of recovery of the overpayment.

Section 8129(a) of the Federal Employees' Compensation Act provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled. Section 8129(b) describes the only exception to the Office's right to adjust later payments or to recover overpaid compensation:

“Adjustment or recovery [of an overpayment] by the United States may not be made when 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.”¹

Appellant correctly argues that she was not at fault in the matter of the overpayment. However, the fact that an individual is without fault in the matter of the overpayment does not, by itself, preclude the Office from adjusting later payments or recovering the overpayment amount, as explained by section 8129(b) as noted above. This section prohibits adjustment or recovery when the individual is without fault *and* when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience. Thus, because appellant is

¹ 5 U.S.C. § 8129(b).

without fault in the matter of the overpayment, the Office may, in accordance with section 8129(b), adjust later payments or recover the overpaid amount only if adjustment or recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.322 of Title 20 of the Code of Federal Regulations.

Section 10.322(a) provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and the resources needed for ordinary and necessary living expenses and, also, if the individual's nonexempted assets do not exceed a resource base of \$3,000.00, or \$5,000.00 if the individual has a spouse or one dependent.² Section 10.323 provides that recovery of an overpayment would be against equity and good conscience if: (1) the overpaid individual would experience severe financial hardship in attempting to repay the debt, with "severe financial hardship" determined by using the same criteria set forth in section 10.322; or (2) the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.³

With respect to whether recovery of the overpayment of compensation would defeat the purpose of the Act, the record reveals that appellant had the following monthly expenses: food \$200.00; clothing \$50.00; gas \$100.00; electricity \$96.23; telephone \$39.65; home maintenance \$53.96; car insurance \$41.33; other insurance \$171.45; gas and oil for car \$42.53; medical expenses \$193.98; property taxes and home insurance \$26.21; credit union \$62.00; Montgomery Ward \$10.00; Visa \$201.00, second Visa \$25.00; Discover \$50.00; J.C. Penney \$50.00; and MNBA \$15.00.⁴ The record further reveals that appellant received monthly compensation in the amount of \$1,256.60 from the Office and \$529.00 from social security. In addition, appellant had \$250.90 in her checking account, \$257.65 in a savings account and \$79.26 in a credit union account. Appellant's monthly income, which totaled \$1,785.60 exceeded her monthly expenses, which totaled \$1,428.34 by \$357.26. As a result, recovery of the overpayment in the amount of \$3,589.02 would not defeat the purpose of the Act.

With respect to whether recovery would be against equity and good conscience, appellant has not alleged and the evidence, does not demonstrate, that she relinquished a valuable right or changed her position for the worse in reliance on the erroneous compensation rate which formed the basis for the overpayment. Inasmuch as appellant has not shown that recovery would "defeat the purpose of the Act" or would "be against equity and good conscience," the Board finds that the Office properly denied waiver or recovery of the overpayment in the amount of \$3,589.02.

The Board further finds that the Office properly required repayment of the overpayment by withholding \$50.00 from appellant's monthly continuing compensation payments.

² 20 C.F.R. § 10.322(a).

³ 20 C.F.R. § 10.323.

⁴ In determining appellant's ordinary and necessary monthly living expenses, the Office disallowed appellant's monthly satellite dish expense, reduced her telephone allowance to a basic monthly bill and reduced the credit card allowances to the minimum monthly payment required by the companies.

Section 10.321 of Title 20 of the Code of Federal Regulations provides in pertinent part:

“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 supports that, in requiring repayment of the overpayment by deducting \$50.00 from appellant’s monthly continuing compensation payments, the Office took into consideration the financial information submitted by appellant as well as the factors set forth in section 10.321. Therefore, the Board finds that recovery of the overpayment by withholding \$50.00 per month from appellant’s continuing monthly compensation benefits does not constitute an abuse of discretion.

The March 24, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
September 24, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ 20 C.F.R. § 10.321(a).