

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALTON VANN and U.S. POSTAL SERVICE,
CITY POST OFFICE, Washington, DC

*Docket No. 98-417; Submitted on the Record;
Issued January 13, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined to withhold \$151.71 from appellant's continuing compensation for recovery of an overpayment in compensation.

The case has been on appeal previously.¹ In a December 31, 1996 decision, the Board found that the Office had properly determined that appellant forfeited compensation because he failed to report his self-employment while receiving temporary total disability compensation. The Board, however, found that the entire period of forfeiture declared by the Office, February 12, 1987 through September 13, 1993, was not fully covered by the 15-month periodic reports to the Office on the CA-1032 forms in which appellant was required to report employment. The Board therefore remanded the case for further development of the periods for which appellant would forfeit compensation. The Board further found that the Office had properly found that appellant was not without fault in the creation of the overpayment. The Board, however, found that the Office had improperly denied appellant's request for reconsideration of the amount to be withheld from his continuing compensation. The Board noted that appellant had submitted evidence that items of expense, such as his mortgage, had risen and other expenses, such as utilities cost, were higher than previously reported. The Board therefore remanded the case for further development of the amount to be recovered from appellant's continuing compensation payments.

In a June 18, 1997 merit decision, the Office issued a modification of its prior decision in appellant's case. The Office found that the periods for which compensation was forfeited were February 6, 1987 through April 27, July 29, 1989 through October 29, 1990, April 7, 1991 through July 7, 1992 and July 23, 1992 through September 23, 1993. It concluded that the amount of the overpayment due to forfeited compensation was \$115,038.32. The Office

¹ Docket No. 96-158 (issued December 31, 1996). The history of the case is contained in the prior decision and is incorporated by reference.

separately compromised the amount of the overpayment to \$55,973.95. The Office noted that appellant's monthly income was \$3,175.79. It indicated that it had calculated his monthly expenses as \$2,649.28 after eliminating or reducing some of the expenses reported by appellant. It therefore had been deducting \$457.95 a month from his monthly compensation payments. The Office concluded that the evidence submitted by appellant showed that he had monthly medication expenses of \$45.00, additional monthly credit card payments of \$152.14, an average monthly gas bill of \$83.65 rather than the previously reported average bill of \$42.50, and monthly mortgage payments of \$874.00 rather than the previous mortgage payment of \$780.53. The Office denied appellant's request to include the \$385.00 tuition expense of his daughter's parochial school. The Office found that, although appellant argued that education in a parochial school was necessary due to the poor quality of schools within his geographic area, it was beyond its scope to evaluate the quality of education in the school district in which appellant resided. It stated that appellant had not submitted any evidence that his daughter would have failed scholastically in a public school. The Office refused to allow adjustments in expenses of \$75.00 for clothing, \$425.00 for education, \$20.00 for dental expenses, \$30.00 in medical expenses and \$150.00 in miscellaneous expenses on the grounds that appellant had not submitted any documentation in support of these particular expenses. The Office also refused to allow expenses of \$50.00 for car maintenance, \$200.00 for general household needs, \$50.00 for personal miscellaneous expenses and \$20.00 for personal medical expenses because these expenses also were not documented. The Office concluded, therefore, that appellant had shown additional monthly expenses of \$331.76 for a total monthly expense of \$3,011.44. The Office calculated that appellant had \$164.35 available after expenses were subtracted from income. It therefore set a repayment of \$151.71 from each compensation payment to recover the remainder of the overpayment, effective June 22, 1997. The Office subtracted the amount already withheld from appellant's compensation, \$14,654.90, from the compromised amount of the overpayment and indicated that appellant had a remaining overpayment of \$41,318.95.

In a July 15, 1997 letter, appellant requested reconsideration. Appellant contended that since the Office had improperly withheld too much money from his compensation payments, causing financial hardship and necessitating legal help, the Office should refund to him the \$14,654.90 withheld from his compensation, with interest and should pay his legal fees of \$6,700.00, with interest. He also submitted additional checks to show that he was paying additional monthly expenses of \$25.00 for drinking water service; \$438.00 in education expenses, due to student loans; \$79.00 in automotive service, including gas, insurance and other services; \$151.50 in dental bills, \$300.00 in repayment of legal costs, and \$132.00 in clothing and personal expenses. Appellant concluded that he did not have a surplus of income over expenses but had suffered increased financial hardship because his expenses exceeded his income. In a July 16, 1997 letter, appellant indicated that the Social Security Administration had reduced his income by \$515.00 a month because it had found appellant's daughter was no longer eligible for elementary and high school benefits after she had graduated from high school in June 1996.

In an October 27, 1997 merit decision, the Office denied appellant's request for modification of its June 18, 1997 decision. In an accompanying memorandum, an Office supervisory claims examiner stated that appellant must submit documentation to support all of

his current monthly expenses and income so that the Office would have an accurate picture of his current financial status.

The Board finds that the case is not in posture for decision.

Appellant submitted new, relevant evidence to the Office concerning his income and monthly expenses. He indicated that his family's monthly income had been reduced by \$515.00 due to a reduction in Social Security benefits. He submitted documented evidence to show expenses in educational loans that had not been previously considered. He also showed expenses for car insurance and maintenance, clothing, drinking water, dental costs, legal fees and other expenses. The Office stated that appellant had to submit documentation to show his entire financial status. This requirement placed by the Office, however, is not required by any part of the statute, regulations, or procedures which govern the Office under the Federal Employees' Compensation Act. Once appellant has submitted new, relevant evidence to show increased expenses or decreased income, it becomes the responsibility of the Office to review appellant's entire financial situation to determine whether it is withholding the proper amount from appellant's continuing compensation. The Office cannot reject appellant's request for modification solely on the grounds that appellant must submit documentation to show all his expenses and income. The Office must develop the evidence to determine appellant's monthly expenses and income once appellant has submitted credible, relevant evidence of changes in his expenses or income or has submitted documentation to support claims of expenses that the Office had previously rejected on the grounds that appellant had not submitted documentation to support such claims.

Appellant requested a return of the \$14,654.90 previously withheld from his compensation payments. The Office properly deducted this amount from the total amount of the overpayment rather than refund it to appellant. Appellant also demanded that the Office pay his legal fees incurred in relation to his compensation claim. There is no provision in the Act or its implementing regulations for payment of a claimant's attorney's fees. Section 10.145(f) of the Office's regulations provides that the "Office will not pay ... any representative fee."² Appellant therefore has no basis to request payment of attorney's fees by the Office.

² 20 C.F.R. §10.145(f).

The decisions of the Office of Workers' Compensation Programs dated October 27 and June 18, 1997 are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 13, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member