

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. CONERLY and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 98-2155; Submitted on the Record;
Issued June 16, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of the overpayment that occurred in appellant's case; and (2) whether the Office properly denied reimbursement of expenses relating to appellant's paralegal course work.¹

On the prior appeal of this case,² the Board found that the Office improperly terminated appellant's compensation benefits. On remand the Office reinitiated compensation payments but used an incorrect pay rate. The Office corrected the error but not before an overpayment of compensation arose from July 1, 1997 to January 3, 1998 in the amount of \$1,008.46.

On January 26, 1998 the Office made a preliminary determination that an overpayment occurred and found appellant was without fault in the matter. The Office notified appellant that he had 30 days to request waiver of the overpayment. The Office advised appellant to complete an attached overpayment recovery questionnaire, Form OWCP-20, and to attach any supporting documents in his possession.

On February 16, 1998 appellant requested that the matter be dismissed. He also requested a telephone conference. The Office attempted to reach appellant to schedule the telephone conference, but telephone messages and a letter dated May 4, 1998 drew no response.

In a decision dated May 28, 1998, the Office finalized its preliminary determination and found that the circumstances of appellant's case did not warrant waiver of the overpayment.

¹ Appellant also appeals a June 3, 1998 letter from the Office arranging a medical examination and a June 1, 1998 billing statement. The Board has no jurisdiction to review these documents. 20 C.F.R. §§ 501.2(c) and 501.3(a).

² Docket No. 94-1653 (issued April 28, 1997).

In a second decision dated May 28, 1998, the Office denied reimbursement of expenses relating to appellant's paralegal course work.

The Board finds that the Office did not abuse its discretion in denying waiver of the overpayment that occurred in this case.

Section 8129(a) of the Federal Employees' Compensation Act³ 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:

“Adjustment or recovery by the United States may not be made when incorrect payment had 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.”⁴

The Office found that appellant was without fault in the matter of the overpayment; however, the fact that an individual is without fault does not preclude the Office from adjusting later payments or recovering the overpayment amount, as section 8129(b) explains. 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. Because appellant is 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 and 10.323 of Title 20 of the Code of Federal Regulations.

Section 10.322(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and 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.⁵ Section 10.323 provides that recovery of an overpayment is considered to be against equity and good conscience if the overpaid individual would experience severe financial hardship in attempting to repay the debt, with “severe financial hardship” determined by the same criteria set forth in section 10.322, or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.⁶

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* § 8129(b).

⁵ 20 C.F.R. § 10.322(a).

⁶ *Id.* § 10.323.

The Form OWCP-20 overpayment recovery questionnaire is designed to obtain the financial information necessary to determine whether adjustment or recovery would defeat the purpose of the Act.⁷ Appellant did not submit the overpayment recovery questionnaire attached to the Office's preliminary decision and he did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Neither has he argued or submitted evidence to establish that recovery of the overpayment would be against equity or good conscience because, in reliance on the overpaid compensation, he relinquished a valuable right or changed his position for the worse.

Although appellant is without fault in the matter of the overpayment, he nonetheless bears responsibility for providing the financial information necessary to support his request for waiver. Section 10.324 of Title 20 of the Code of Federal Regulations states in this regard:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial documentation described in section 10.322 as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in the denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished.”⁸

Whether to waive an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines.⁹ The Board has held that, when a claimant submits no financial evidence to support his request for waiver, the Office commits no abuse of discretion in denying that request.¹⁰ As appellant failed to respond to the Office's request for financial information necessary to determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion in refusing to waive the overpayment.

The Board also finds that the Office properly denied reimbursement of expenses relating to appellant's paralegal course work.

On July 10, 1997 appellant requested reimbursement of expenses “related to my job related injuries and rehabilitation.” He included a “request for rehabilitation schooling travel expenses” and a request for “rehabilitation expenses tuition/registration/texts/equip.”

Section 8104 of the Act provides that the Office may direct a permanently disabled individual whose disability is compensable to undergo vocational rehabilitation. This section

⁷ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.a(4) (September 1994).

⁸ 20 C.F.R. § 10.324.

⁹ See *William J. Murphy*, 40 ECAB 569 (1989).

¹⁰ *E.g., Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); *Joseph H. Light*, 13 ECAB 358 (1962).

also provides that the cost of providing vocational rehabilitation services shall be paid from the Employees' Compensation Fund.¹¹

A vocational rehabilitation report dated September 13, 1992 described as "self-procured" appellant's training program at American River College for the occupation of paralegal. A vocational rehabilitation plan could not be proposed at that time because of a pending medical evaluation, the results of which would determine the nature of further rehabilitation services. The rehabilitation counselor reported that, depending on the result of medical evaluation, it would be appropriate to have appellant evaluated through psychological testing to determine if he was a viable candidate to be successful in a formal training program at American River College, in accordance with Office guidelines. A vocational rehabilitation report dated November 13, 1992 further indicated that appellant was taking classes at American River College "on his own."

In a report dated November 9, 1992, Dr. Gary S. Gilbert, a psychologist, reported that although appellant was intelligent, logical and analytical in his ability to collate information from a variety of sources, it was doubtful that he would have the psychological and physiological stamina to maintain a sufficient work pace or to maintain concentration for sufficient periods to successfully work in a remunerative capacity. Dr. Gilbert added, however, that he did not wish to discourage appellant from pursuing his studies at American River College. Appellant described such involvement as a form of relief and personal therapy, a means to divert his mind from the various negative memories and affects. "However," Dr. Gilbert stated, "this is best viewed as an informal therapy as opposed to formal vocational plan." He reported that it was far too premature to attempt formal vocational rehabilitation.

As the reports of the Office rehabilitation counselor and Dr. Gilbert establish, the expenses for which appellant seeks reimbursement were not incident to any formal or Office-approved vocational rehabilitation plan or related travel. Section 8104 of the Act does not authorize the reimbursement of expenses for self-procured training or self-directed informal therapy. The Board finds that the Office properly denied reimbursement of expenses relating to appellant's paralegal course work.

¹¹ 5 U.S.C. § 8104(a).

The May 28, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 16, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member