

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS E. RAY and DEPARTMENT OF DEFENSE,  
DEPENDENT SCHOOLS, Osterholz-Scharmbeck, Germany

*Docket No. 97-2642; Oral Argument Held December 3, 1999;  
Issued March 2, 2000*

Appearances: *Barbara Gibbs*, for appellant; *Sheldon G. Turley, Jr., Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied waiver of a \$4,443.22 overpayment; and (2) whether the Office properly determined that the overpayment should be collected by deducting \$200.00 from appellant's continuing compensation payments.

The case was before the Board on a prior appeal. In a decision dated April 19, 1996, the Board affirmed that an overpayment of \$4,443.22 had been created, but found that the Office had failed to meet its burden of proof in establishing that appellant was at fault in creating the overpayment.<sup>1</sup> The case was remanded on the issue of waiver of the overpayment. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By decision dated June 13, 1996, the Office determined that appellant was not entitled to waiver of the overpayment.<sup>2</sup>

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

In the memorandum accompanying the June 13, 1996 decision, the Office determined that appellant was not entitled to waiver because the record did not show that he needed substantially all of his income for ordinary and necessary living expenses. In making this

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<sup>1</sup> Docket No. 94-1356 (issued April 19, 1996).

<sup>2</sup> The record also contains an April 16, 1997 decision terminating appellant's compensation. As noted by the Director, appellant made a timely request for an oral hearing before an Office hearing representative, and on return of the case record appellant is entitled to an oral hearing with respect to the April 16, 1997 decision.

determination, the Office apparently relied on information provided by appellant in an overpayment recovery questionnaire dated March 3, 1993. There is no indication that the Office attempted to secure current financial information from appellant in order to make a determination on eligibility for waiver of the overpayment. Since the only financial information in the record was more than three years old, the Office should have attempted to obtain current information regarding appellant's income, expenses and assets. It is appellant's current financial situation, at the time of the waiver determination, that must be considered, not information relevant to the period of the overpayment itself.<sup>3</sup> At the time appellant completed the overpayment recovery questionnaire in 1993, there was no issue with respect to waiver of the overpayment because the Office had found appellant at fault in creating the overpayment.

Accordingly, the case will be remanded to the Office to secure current financial information relevant to waiver of the overpayment. After such further development as the Office deems necessary, it should issue an appropriate decision.<sup>4</sup>

The decision of the Office of Workers' Compensation Programs dated June 13, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
March 2, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> See *Ronald E. Smith*, 36 ECAB 652 (1985).

<sup>4</sup> Since the waiver issue has not been properly resolved, the Board will not address the repayment issue.