

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADRIENNE L. WINTRIP and U.S. POSTAL SERVICE,
POST OFFICE, Palm Coast, FL

*Docket No. 99-693; Submitted on the Record;
Issued November 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$129.28 because health benefits and optional life insurance premiums were not deducted from her monthly compensation from February 1 to March 28, 1998; (2) whether the Office abused its discretion in denying waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by withholding \$129.28 from appellant's continuing compensation.

This case is before the Board for the third time. In decisions dated February 9, 1987¹ and September 16, 1991,² the Board remanded the case for the Office to further develop the medical evidence on the issue of whether appellant's disability from employment beginning March 22, 1984 was causally related to factors of her federal employment.

Following further development of the evidence, the Office, on November 9, 1994, accepted appellant's claim for a conversion reaction and aggravation of a conversion disorder.³

On November 6, 1997 appellant elected benefits from the Office in lieu of retirement benefits from the Office of Personnel Management (OPM). In a letter received by the Office on February 1, 1998, a benefits specialist with OPM indicated that she had transferred appellant's

¹ Docket No. 86-1616 (issued February 9, 1987).

² Docket No. 91-683 (issued September 16, 1991).

³ By decision dated April 1, 1993, the Office denied appellant's claim on the grounds that the weight of the medical evidence established that she did not have an emotional condition causally related to factors of her federal employment. In a decision dated June 29, 1994, a hearing representative set aside the Office's April 1, 1993 decision and instructed the Office to request that the impartial medical specialist provide rationale for his findings.

health benefits and life insurance enrollment to the Office and that the Office should begin withholding premiums on February 1, 1998.

In a notice dated April 28, 1998, the Office advised appellant that a preliminary determination had been made that an overpayment of \$129.28 occurred during the period February 1 to March 28, 1998 because no deductions were made for health and life insurance premiums. The Office found that appellant was without fault in creating the overpayment. The Office advised appellant that she could request waiver of the overpayment and enclosed a questionnaire regarding appellant's financial situation.

By decision dated September 16, 1998, the Office finalized the overpayment determination. The Office found that appellant was not entitled to waiver of the overpayment and that \$129.28 would be withheld from her next compensation check.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$129.28 because health benefits and optional life insurance premiums were not deducted from her monthly compensation from February 1 to March 28, 1998.

In this case, there does not appear to be any dispute that deductions for health and life insurance premiums were not taken from appellant's compensation payments during the period February 1 to March 28, 1998. The computer printouts indicate that no deductions were made for this period and no contrary evidence was submitted.⁴ The Board, therefore, finds that an overpayment was created in the amount of \$129.28.

The Board further finds that the Office properly denied waiver of the overpayment.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that results within the Office's discretion pursuant to statutory guidelines.⁵ These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "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 this subchapter or would be against equity and good conscience."⁶ Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), the Office may recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections

⁴ The Board has previously recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM when the error is discovered; *see John E. Rowland*, 39 ECAB 1377 (1988).

⁵ *See Robert Atchison*, 41 ECAB 83 (1989).

⁶ 5 U.S.C. § 8129(b).

10.322 and 10.323, respectively, of the Code of Federal Regulations. Section 10.322(a) provides, generally, 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 resources needed for ordinary and necessary living expenses and, also, if the individual's assets, those which are not exempt from recovery, do not exceed a resource base of \$3,000.00 (or \$5,000.00 if the individual has a spouse or one dependent, plus \$600.00 for each additional dependent).⁷ Section 10.323 provides, generally, 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 payment which created the overpayment, relinquished a valuable right or changed position for the worse.⁸

Although appellant was found to be without fault in the matter of the overpayment, she nevertheless bears responsibility for providing the requisite information to support waiver of the overpayment. In this regard, section 10.324 of Title 20 of the Code of Federal Regulations provides:

"In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information 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 denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished."⁹

In this case, appellant was advised of the need to submit financial information, but there is no indication that any relevant financial information was received prior to the September 16, 1998 decision. Since appellant did not submit the necessary information, the Board finds that the Office properly found that appellant was not entitled to waiver on the grounds that recovery would defeat the purpose of the Act. With respect to whether appellant relinquished a valuable right or changed her position for the worse, appellant did not offer any argument or evidence that would establish that the overpayment would be against equity and good conscience.

The Board further finds that the Office properly required repayment of the overpayment by deducting \$129.28 from appellant's next compensation check.

⁷ 20 C.F.R. § 10.322(a).

⁸ 20 C.F.R. § 10.323.

⁹ 20 C.F.R. § 10.324; *see John B. Moore*, 41 ECAB 804 (1990).

Section 10.321 of the Office's regulations provides:

“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.”¹⁰

When an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹¹ The Board finds that the Office did not abuse its discretion in requiring repayment by deducting the full amount from appellant's next compensation check.

The decision of the Office of Workers' Compensation Programs dated September 16, 1998 is hereby affirmed.

Dated, Washington, DC
November 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁰ 20 C.F.R. § 10.321.

¹¹ *Gail M. Roe*, 47 ECAB 268 (1995).