

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEULAH B. WOOTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Beckley, WV

*Docket No. 00-1572; Submitted on the Record;
Issued April 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of recovery of a \$1,240.02 overpayment in compensation.

On January 16, 1997 appellant, then an 81-year-old personnel management specialist, filed a claim alleging that on January 15, 1997 she slipped and fell at work causing a laceration to her chin, a contusion to her forehead and an abrasion to her left knee. Appellant did not return to work after the injury. On February 21, 1997 the Office accepted appellant's claim for laceration of the chin, contusion of the forehead, post-traumatic headache and contusion of the left knee.

Appellant retired from federal service effective April 1, 1998.

In a form report dated February 18, 1999, the Office of Personnel Management (OPM) noted by checking appropriate boxes that appellant's annuity began on April 1, 1998 and that basic life insurance premiums were withheld as of that date. However, in a report dated June 3, 1999, the Office indicated that appellant had been overpaid \$1,240.02 because OPM had not deducted basic life insurance premiums from April 1, 1998 to May 22, 1999. An attachment noted that appellant's basic life insurance premium was \$82.68 per pay period and that no deductions had been taken for 15 pay periods, which amounted to an overpayment of compensation of \$1,240.02. In a memorandum for the record dated June 28, 1999, the Office noted that appellant was without fault in the overpayment.

The Office informed appellant on June 28, 1999 that it had made a preliminary overpayment determination in the amount of \$1,240.02 because no basic life insurance premiums were withheld from April 1, 1998 to May 23, 1999. The Office found that appellant was without fault in the creation of the overpayment and advised her regarding what steps she may take if she believed that she should receive a waiver from her obligation to repay the overpayment. In a memorandum for the record dated January 19, 2000, the Office stated that

appellant had neither submitted additional evidence nor had she requested an oral hearing and that, therefore, repayment of the overpayment would not be waived.

By decision dated January 18, 2000, the Office determined that appellant was not entitled to waiver of the overpayment in the amount of \$1,240.02.¹

The Board finds that the Office did not abuse its discretion in finding that recovery of the overpayment would not defeat the purpose of the Federal Employees' Compensation Act.

Section 8129(a) of the Act² 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 recover overpaid compensation:

“Adjustment or recovery 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.”³

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 10.436 and 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 of Title 20 of the Code of Federal Regulations provides that recovery of an overpayment will defeat the purpose of the Act if:

“(a) The beneficiary from whom recovery OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

“(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP as determined from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.”⁴

Section 10.437 of Title 20 of the Code of Federal Regulations provides that recovery of an overpayment would be considered to be against equity and good conscience if any individual

¹ The Board notes that the Office issued its decision on January 18, 2000 but that an Office internal memorandum memorializing the rationale for the decision was dated January 19, 2000.

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8129(d).

⁴ 20 C.F.R. § 10.436.

who received an overpayment would experience severe financial hardship in attempting to repay the debt.⁵

The Office's procedures manual states that recovery would cause hardship if:

“(a) The individual from whom recovery is sought needs substantially of his or her current income (including FECA monthly benefits) to meet current ordinary and necessary living expenses and

“(b) The individual's assets do not exceed the resource base of \$3,000[.00] for an individual, or \$5,000[.00] for an individual with a spouse or one dependent, plus \$600[.00] for each additional dependent....”⁶

In this case, appellant did not submit any documentation to support her claim that a waiver of recovery of the overpayment was appropriate. Appellant was provided several opportunities to submit such financial information that would provide the Office with the necessary information to determine the appropriateness of a waiver of recovery. To the extent that appellant had sufficient notice regarding her opportunity to submit supporting financial evidence and was made aware of the possible result were she to not submit the information requested, the Board finds that the decision of the Office to deny appellant's claim for waiver of recovery of overpayment is proper.⁷

⁵ 20 C.F.R. § 10.437.

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1) (September 1994).

⁷ See *Richard S. Gumper*, 43 ECAB 811 (1992).

The decision of the Office of Workers' Compensation Programs dated January 18, 2000 is hereby affirmed.⁸

Dated, Washington, DC
April 6, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ The Board notes that this case record contains evidence which was submitted subsequent to the Office's January 18, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).