

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE M. ELLIS, JR. and DEPARTMENT OF JUSTICE,
FEDERAL CORRECTIONAL INSTITUTE, Petersburg, VA

*Docket No. 00-526; Submitted on the Record;
Issued August 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$4,609.80 was created; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly determined that the overpayment should be repaid by deducting \$200.00 from appellant's continuing compensation.

In this case, the Office accepted that appellant sustained exacerbation of cervical strain and lumbar spondylosis, as well as headaches and concussion, in the performance of duty on January 21, 1994. By letter dated September 15, 1999, the Office notified appellant that it had made a preliminary finding that an overpayment of \$4,609.80 was created. The Office found that, during the period July 23, 1995 to July 23, 1999, deductions for optional life insurance had incorrectly been based on an annual salary of \$5,700.00, instead of \$57,000.00. With respect to fault, the Office determined that appellant was not at fault in creating the overpayment. Appellant was advised that he could take one of the following actions within 30 days: request a telephone conference with the Office, request that the Office issue a final decision based on the written evidence, or request a precoupment hearing before an Office hearing representative.

By decision dated October 15, 1999, the Office finalized its preliminary determination with respect to the amount of the overpayment. The Office also denied waiver of the overpayment, finding that appellant had not submitted any financial information. Repayment of the overpayment was to be accomplished by deducting \$200.00 from continuing compensation.

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

As noted above, the Office advised appellant of appropriate action he could take following the preliminary determination of an overpayment dated September 15, 1999. It is well established that recovery of overpayments requires an opportunity for a precoupment hearing.¹

¹ See Fred A. Cooper, Jr., 44 ECAB 498, 509 (1993).

The request for a prerecoupment hearing must be made within 30 days of the date of the written notice of overpayment.² The record clearly indicates that, on October 7, 1999, the Office received a completed form and a letter dated October 5, 1999 indicating that appellant was requesting a prerecoupment hearing before an Office hearing representative on the issues of fact of overpayment, amount and waiver. Appellant also submitted substantial financial information with his request for a hearing.

Since the Office received a request for a hearing within 30 days of the September 15, 1999 preliminary determination of overpayment, the Board finds that appellant submitted a timely request for a prerecoupment hearing on the overpayment issues presented. The case will be remanded for an appropriate hearing before an Office hearing representative. After such further development as is deemed necessary, an appropriate decision should be issued.

The decision of the Office of Workers' Compensation Programs dated October 15, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

² 20 C.F.R. § 10.432.