

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRADFORD W. MACAULEY and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER,
West Roxbury, MA

*Docket No. 00-1311; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$1608.07 was created; and (2) whether the Office properly denied waiver of the overpayment.

In the present case, the Office advised appellant, by letter dated February 11, 1999, that it had made a preliminary determination that an overpayment of \$1,608.07 had been created. The Office explained that, for the period October 26, 1997 to December 5, 1998, the Office had failed to deduct health benefit insurance premiums from his continuing compensation. Appellant was advised that a preliminary determination had been made that he was not at fault in creating the overpayment, and he could submit financial information with respect to waiver of the overpayment.

By decision dated January 26, 2000, the Office finalized the preliminary determination of a \$1,608.07 overpayment; the Office also denied waiver of the overpayment.

The Board finds that the Office properly found an overpayment of \$1,608.07 was created.

The record indicates that health benefit insurance premiums were not deducted from appellant's compensation payments during the period October 26, 1997 to December 5, 1998. Appellant was enrolled in a health benefit plan during this period, and therefore an overpayment was created. The Office determined that \$1,608.07 should have been deducted during this period. Appellant does not appear to dispute the existence or the amount of the overpayment; he does, however, contest the denial of waiver of the overpayment.

The Board further finds that the Office properly denied waiver in this case.

Section 8129(b) of the Federal Employees' Compensation Act¹ provides: "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 the Act or would be against equity and good conscience."² Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery 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 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses," and, also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.³ For waiver under the "defeat the purpose of the Act" standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.⁴

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; (b) the individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.

The financial information provided by appellant indicates monthly income of \$3,791.36, with expenses of \$3,719.59. An individual is deemed to need substantially all of his current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁵ In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses, *i.e.*, ordinary and necessary living expenses plus \$50.00.⁶ Since appellant did report income exceeding expenses plus \$50.00, he has not met the requirements of section 10.436 or

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8129(b).

³ Office procedures provide that the assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or dependent plus \$600.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200 (September 1994).

⁴ See *Robert E. Wenholz*, 38 ECAB 311 (1986).

⁵ *Gail M. Roe*, 47 ECAB 268, 274 (1995); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200 (September 1994).

⁶ *Gail M. Roe*, *supra* note 5. The Board notes that on the issue of repayment its jurisdiction is limited to repayments deducted from continuing compensation. *Levon H. Knight*, 40 ECAB 658 (1989). The January 26, 2000 decision did not indicate that the overpayment was to be recovered from continuing compensation payments.

10.437(a). There was no evidence presented that appellant gave up a valuable right or changed his or her position for the worse under 10.437(b).

Accordingly, the Board finds that appellant did not meet the requirements for waiver of the overpayment in this case.

The Board notes that on appeal appellant expressed his disagreement with the potential charging of interest on the overpayment debt. The statutory authority to assess interest on an overpayment debt under the Act is found at 31 U.S.C. § 3717.⁷

The decision of the Office of Workers' Compensation Programs dated January 26, 2000 is affirmed.

Dated, Washington, DC
August 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁷ See *Marie D. Simnett*, 40 ECAB 1009 (1989).