

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN D. WARD (deceased) and DEPARTMENT OF THE NAVY,
Rockville, MD

*Docket No. 99-959; Oral Argument Held July 10, 2001;
Issued August 29, 2001*

Appearances: *Randall G. Rose, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,464.57 for the period March 21 to September 12, 1998 as he received compensation at the augmented rate following the death of his dependent; (2) whether the Office of Workers' Compensation Programs properly determined that appellant was at fault in the creation of the overpayment such that it was not subject to waiver; and (3) whether the Office properly withheld \$200.00 from appellant's continuing compensation benefits.

On July 6, 1988 appellant, a 53-year-old maintenance mechanic, filed a notice of traumatic injury alleging that he injured his low back when he slipped in the performance of duty. The Office accepted appellant's claim for lumbar strain. Appellant filed a notice of recurrence of disability on April 12, 1990 alleging that on October 16, 1989 he sustained a recurrence of his employment-related disability. The Office accepted this recurrence and expanded appellant's claim to include aggravation of degenerative arthritis on January 2, 1991. The Office entered appellant on the periodic rolls on that date.

Appellant signed a Form CA-1049 instructing him to "[A]dvise us immediately ... of any change in status of your dependents. Beginning September 24, 1991, appellant completed CA-1032 forms, claiming his wife as his only dependent.

On May 15, 1998 the Office received a death certificate indicating that appellant's dependent, his wife, died on March 20, 1998. The Office also received a request at this time to remove appellant's wife from his optional life insurance. The Office did so.

Appellant completed a Form CA-1032 on September 27, 1998 indicating that he had no dependents as his wife died on March 20, 1998. The Office made a preliminary determination that an overpayment of compensation in the amount of \$1,464.57 occurred as appellant

continued to receive compensation at the augmented rate and that appellant was at fault in the overpayment as he failed to report the change in status.

Appellant requested a review based on the written evidence on October 12, 1998 and resubmitted the death certificate. He did not submit any financial information.

By decision dated December 4, 1998, the Office finalized its finding of overpayment in the amount of \$1,464.57, found that appellant was at fault in the creation of the overpayment and concluded that, as appellant had submitted no financial information, recovery in the amount of \$200.00 from his continuing compensation benefits was appropriate.

The Board finds that appellant received an overpayment of compensation in the amount of \$1,464.57 for the period March 21 to September 12, 1998 as he received compensation at the augmented rate following the death of his dependent.

Appellant did not contest the amount of the overpayment on appeal. He received compensation at the augmented rate after the death of his dependent from March 21 to September 12, 1998 and the Office determined that the amount of the overpayment was \$1,464.57.

The Board further finds that appellant was at fault in the creation of the overpayment and that recovery of the overpayment cannot be waived.

Section 8129(a) of the Federal Employees' Compensation Act¹ provides that, where an overpayment of compensation has been made "because of an error or fact of law," adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "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 Accordingly, no waiver of an overpayment is possible if the claimant is with fault in helping to create the overpayment.

In determining whether an individual is with fault, section 10.320(b) of the Office's regulations³ provides in relevant part:

"An individual is with fault in the creation of an overpayment who:

Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

¹ 5 U.S.C. §§ 8101-8193, 8129(a).

² 5 U.S.C. § 8129(b).

³ 20 C.F.R. § 10.320(b).

Failed to furnish information which the individual knew or should have known to be material; or

With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.”

In this case, the Office applied the second standard in determining that appellant was at fault in creating the overpayment. He signed a Form CA-1049 instructing him to “[A]dvice us immediately ... of any change in status of your dependents. Beginning September 24, 1991, appellant completed Form CA-1032, claiming his wife as his only dependent. Based on the completion of these forms, the evidence indicates that appellant knew or should have known that he was required to inform the Office immediately of any change in the status of his dependants.

On appeal, appellant, through his attorney, contends that he contacted the Office of Personnel Management (OPM) and informed OPM of the death of his wife and relied on OPM to notify the Office of the change in his dependent status. Although OPM did inform the Office of appellant’s change in health benefits following his wife’s death, there is nothing in the record which indicates that OPM advised appellant that it would inform the Office of the necessity to reduce appellant’s compensation benefits. The record shows that appellant received disability compensation from the Office for seven years before his wife died. On the basis of the length of this relationship with the Office, appellant should have known that the Office not OPM, bears full responsibility for the processing of compensation benefits and that all information regarding such benefits should be directed to the Office not to OPM.⁴

The Board further finds that the Office properly withheld \$200.00 from appellant’s continuing compensation benefits.

Section 10.321(a)⁵ provides that, if an overpayment of compensation has been made to one entitled to future 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.” When, as in this case, 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.⁶ The Board finds that the Office did not abuse its discretion in following those guidelines in this case.

⁴ *Frank Monti*, 40 ECAB 669, 676 (1989).

⁵ 20 C.F.R. § 10.321(a).

⁶ *Gail M. Roe*, 47 ECAB 268, 276 (1995).

The December 4, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member