

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINETTE B. SKINNER and DEPARTMENT OF AGRICULTURE,  
FEDERAL CROP INSURANCE CORPORATION, Billings, MT

*Docket No. 99-1129; Submitted on the Record;  
Issued February 16, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation in the amount of \$2,385.00 occurred; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment.

In a preliminary determination dated September 5, 1997, the Office found that appellant received an overpayment in the amount of \$2,385.00 during the period June 23 through November 9, 1996 because the Office failed to adjust compensation based on her actual earnings as a social services assistant. The Office found that appellant was at fault in the matter of the overpayment because she should have known that she was not entitled to compensation for total disability while working. The Office informed appellant that, if she disagreed with the fact or the amount of the overpayment or that she was at fault in the creation of the overpayment and wanted the overpayment to be waived, she had the right to submit new evidence to support her contention or she could request a waiver or recoupment hearing within 30 days of receipt of the letter and submit appropriate evidence to justify her request. The Office enclosed an overpayment recovery questionnaire, Form OWCP-20, for review in determining whether the overpayment should be waived.

By letter dated September 22, 1997, appellant stated that she did not have any knowledge of an overpayment from the Office. She stated that her husband committed suicide on February 9, 1996, and her sister died on June 24, 1996 of cancer. Appellant stated that due to the shock the last item on her mind was payment from the Office. She stated that, because she returned her usual report to the Office, she thought the payment was correct. Appellant stated that she only received one explanation from the Director in response to her contacting the Office, and in November or December 1996 when she contacted the Office to inquire about the amount of her checks and the reason they decreased, the Office did not respond. Appellant stated that, although she received a check approximately in the amount of \$15,000.00 after her sister died, \$2,000 of which she paid to her mother, she divided the remainder between her children and her but she still owed her mother \$8,000.00 and was over

\$13,000.00 in arrears for financial aid. Appellant submitted a completed Form OWCP-20 which was undated but received by the Office on October 15, 1997 with supporting financial documents.

By letter dated September 22, 1997, appellant requested a preresoupment hearing which was held on September 24, 1998. Appellant testified that, when she left the employing establishment, she was just short of receiving the full \$5,000.00 coverage on her husband's insurance policy, and was told that, instead of receiving \$5,000.00, she would be refunded all the premiums she had paid. She was further told that the amount of the premiums would total approximately half of the insurance policy. Appellant stated that she believed the so-called overpayments represented the insurance premiums she was entitled to receive. Appellant stated that she was told that the premiums would be "added on to [her] payment." She testified that except for one statement the Office never sent her any explanation of the compensation checks she received. Appellant stated that she repeatedly contacted the Office to obtain an explanation of the payments but the Office did not respond. Further, appellant stated that she started a new job in March 1998 which paid more than her government job and her compensation payments were stopped.

By decision dated December 2, 1998, the Office hearing representative finalized the preliminary determination of an overpayment of \$2,385.00. The Office hearing representative found that appellant was at fault in the creation of the overpayment, stating that appellant knew or reasonably should have known that the unexplained increase in her compensation for the period June 23 to July 20, 1996 from \$687.86 to \$1,157.60 was incorrect. He explained that appellant presented no evidence that the Office intended the increase in her compensation to reflect a refund of insurance premiums which had previously been deducted from her compensation benefits. The Office hearing representative further stated that a decision to pay the premiums would be a decision by the insurance carrier and would not involve the Office. The Office hearing representative also stated that, at the time of the overpayment, the Office was deducting \$2.00 every 28 days for life insurance premiums and even going back to 1990, the amount would not have totaled \$2,500.00. The Office hearing representative noted that at the hearing appellant was given a revised Form OWCP-20 because the old form was a year old and appellant had a new job. He stated that he did not receive the completed form from appellant and was unable to determine an equitable repayment schedule, and therefore the overpayment was due and payable in full.

The Board finds that appellant received an overpayment in the amount of \$2,385.00.

The Office found in its September 5, 1997 preliminary determination that appellant received an overpayment of \$2,385.00 from June 23 through November 9, 1996 based on appellant's continuing to receive total disability benefits while she was working. The Office documented its calculation with computer printouts showing that during this time period the monthly compensation payments appellant received increased from \$687.86 to \$1,157.60. There is no evidence to the contrary.

The Board further finds that the Office properly found that appellant was at fault in the creation of the overpayment.

Section 8129(b) of the Federal Employees' Compensation Act<sup>1</sup> provides that an overpayment of compensation shall be recovered by the Office unless 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 be against equity and good conscience.<sup>2</sup> Adjustment or recovery must therefore be made when an incorrect payment has been made to an individual who is with fault.<sup>3</sup>

The implementing regulation<sup>4</sup> provides that a claimant is with fault in the creation of an overpayment when she: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.

In the preliminary determination dated September 5, 1997, the Office found that appellant was at fault in the matter of the overpayment because she should have been reasonably aware that she was not entitled to total disability compensation while she was working. Although appellant stated at the hearing that her understanding was that the increased compensation during the relevant time period represented a refund of her insurance premiums which had previously been deducted from her compensation and the Office had so informed her of this arrangement, appellant had no corroborating evidence such as letters or statements or other kinds of written documents or any witnesses' testimony that the Office communicated to her that it was its intention to increase her benefits in the manner she described. Since appellant began her social service assistant job on September 19, 1994, and there is no evidence to document that the Office increased the compensation benefits from June 23 through November 9, 1996 to reflect a refund of insurance premiums, appellant knew or reasonably should have known that she was not entitled to total disability benefits while working. Appellant is therefore at fault in the creation of the overpayment, and no waiver of collection of the overpayment is possible under section 8129(b) of the Act.<sup>5</sup>

The Act provides that, where an overpayment of compensation has been made, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.<sup>6</sup> The applicable regulation provides for "decreasing subsequent payments of compensation, having due regard to the probable extent of the 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."<sup>7</sup>

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<sup>1</sup> 5 U.S.C. § 8129(b).

<sup>2</sup> *Claudia A. Dixon*, 47 ECAB 168, 180-81 (1997); *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

<sup>3</sup> *William G. Norton, Jr.*, 45 ECAB 630, 639 (1994).

<sup>4</sup> 20 C.F.R. § 10.320(b).

<sup>5</sup> *Nina D. Newborn*, 47 ECAB 132, 140 (1995).

<sup>6</sup> 5 U.S.C. § 8128(a); *see William D. Emory*, 47 ECAB 363, 373 (1996).

<sup>7</sup> 20 C.F.R. § 10.321(a); *see Roger Seay*, 39 ECAB 441 (1988).

In the instant case, appellant stated at the hearing that she got a new job in March 1998 which paid more than her government job, and her compensation benefits were stopped. Although she submitted an overpayment recovery questionnaire dated September 22, 1997, she did not respond to the Office hearing representative's request at the hearing to submit an updated form. However, the Board does not have jurisdiction over repayments where, as here, there are no continuing compensation payments being made.

The decision of the Office of Workers' Compensation Programs dated December 2, 1998 is hereby affirmed.

Dated, Washington, DC  
February 16, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member