

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROOSEVELT W. CHEA and DEPARTMENT OF THE NAVY,
NAVY PUBLIC WORKS CENTER, Oakland, CA

*Docket No. 99-2496; Submitted on the Record;
Issued January 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of a \$2,224.17 overpayment of compensation.

After appellant was separated from employment on April 25, 1997, the Office paid compensation benefits but did not deduct premiums for basic life insurance and post-retirement basic life insurance until March 28, 1999.

On March 30, 1999 the Office issued a preliminary determination that an overpayment of \$2,224.17 occurred from April 26, 1997 through March 27, 1999 because these premiums were not deducted. The Office found appellant to be at fault in the matter of the overpayment. The Office advised, however, that in the event the preliminary determination of fault was overturned appellant should complete and submit the enclosed overpayment questionnaire, together with any documents supporting the income and expenses listed. The Office explained that this financial information would help determine whether or not to waive the overpayment. In the event the preliminary determination was upheld, this information would be used to decide how to recover the overpayment. The Office further advised appellant as follows:

“It should also be noted that under the provisions of section 10.438 of Title 20 of the Code of Federal Regulations, the failure to furnish the financial information requested on the enclosed questionnaire (or other information required by this office in connection with a request for waiver) within 30 days will result in a denial of waiver of the overpayment, and no further request for waiver will be considered until the requested information is furnished.”

Appellant replied on April 4, 1999 that he was not at fault. He explained that he had no good way to tell what he was being paid each month and for what reason.

In a decision dated May 3, 1999, the Office found that appellant was not at fault in the creation of the overpayment. The Office denied waiver, however, on the grounds that appellant failed to complete and submit the overpayment recovery questionnaire and to provide the information necessary to consider waiver. The Office found that the overpayment should be recovered at a rate of \$200.00 per check until full recovery in or about March 2000.

The Board finds that the Office did not abuse its discretion in denying waiver of the overpayment.

Although appellant is without fault in the matter of the overpayment, he nonetheless bears responsibility for providing the financial information necessary to support any waiver of the overpayment. Section 10.438 of Title 20 of the Code of Federal Regulations states in this regard:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the [Federal Employees’ Compensation Act], or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.”¹

Whether to waive an overpayment of compensation is a matter that rests within the Office’s discretion pursuant to statutory guidelines.² The Board has long held that when a claimant submits no financial evidence to support waiver of an overpayment, the Office commits no abuse of discretion in denying waiver.³ As appellant submitted none of the financial information requested in this case, the Board finds that the Office did not abuse its discretion in denying waiver of the overpayment.⁴

¹ 20 C.F.R. § 10.438.

² *William J. Murphy*, 40 ECAB 569 (1989).

³ *E.g., Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986); *Joseph H. Light*, 13 ECAB 358 (1962).

⁴ As the financial information requested by the Office was to play a significant role in determining any repayment schedule, the Board finds no abuse by the Office in setting the rate of recovery at \$200.00 per check. Regulations provide that, if no refund is made, the Office shall decrease later payments of compensation, taking into account 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 hardship. 20 C.F.R. § 10.441(a). The Office fully recovered the overpayment in or about March 2000.

The May 3, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 18, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member