

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE M. DAVIS and U.S. POSTAL SERVICE,
POSTAL CONCENTRATION CENTER, San Francisco, CA

*Docket No. 00-682; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly refused to waive recovery of an \$872.40 overpayment in compensation.

On February 8, 1988 appellant, then a 39-year-old postal police officer was injured. The Office accepted appellant's claim for low back strain and began payment of temporary total disability compensation. On June 22, 1989 appellant underwent a microscopic hemilaminectomy and discectomy of the L4-5 disc on the right. The employing establishment offered appellant a position in which she would perform clerical duties. Appellant accepted the position and returned to work, four hours a day, on September 10, 1990.

On October 3, 1995 appellant slipped on a floor mat and fell while trying to sit at her desk. The Office accepted appellant's claim and recommenced payment of temporary total disability compensation.

In a September 1, 1999 letter, the Office informed appellant that it had found that she had received an \$872.40 overpayment in compensation because health benefit premiums were not deducted from her compensation during the period June 23, 1997 to March 27, 1999. The Office indicated that it had made a preliminary determination that appellant was without fault in the creation of the overpayment. It noted that, as she was without fault in the occurrence of the overpayment, the Federal Employees' Compensation Act provided that recovery of the overpayment may not be made if it could be shown that recovery of the overpayment would defeat the purpose of the law or would be against equity or good conscience. The Office stated that the purpose of the Act was to provide at least a subsistence income for beneficiaries. The Office indicated that recovery would be against equity and good conscience if a claimant, acting on erroneous information from the Office, relinquished a valuable right or entered into certain transactions which he or she otherwise would not have undertaken and had suffered a financial loss as a result. Appellant was also informed that a recovery of an overpayment would also be against equity and good conscience if a claimant would experience severe financial hardship in attempting to pay a debt. The Office informed appellant that information about her income and

expenses were important in determining whether to waive recovery of the overpayment. The Office warned her that failure to submit the requested financial information within 30 days would result in a denial of waiver of the overpayment and no further request for waiver would be considered until the requested information was furnished. The Office also informed appellant that she had a right to request a hearing before an Office hearing representative on the issue of the overpayment.

In an October 20, 1999 decision, the Office found that the circumstances of appellant's case did not warrant waiver of recovery of the overpayment. In an accompanying memorandum, a senior Office claims examiner stated that appellant had not submitted a response to the Office's September 1, 1999 notification of the overpayment and no financial information had been furnished. He stated that entitlement to waiver could not be determined.¹

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

Before the Board is in a position to determine whether the Office properly denied appellant's request for waiver of the alleged waiver of the overpayment, it is necessary to determine whether, in fact, there was an overpayment.² This necessitates an examination of how the Office determined the appropriate amount of the overpayment due to a failure to properly deduct the health insurance premiums from appellant's compensation payments. The Office, in its letter notifying appellant of the existence of the overpayment, stated that the health insurance deductions were for plan "LBI." The Office, however, did not discuss the proper amount that should have been deducted from appellant's compensation checks and did not describe in detail how it calculated the amount of the overpayment. Without such an explanation, the Board cannot properly review the Office's decision to determine whether it properly found that an overpayment occurred and the amount of the overpayment. The case must therefore be remanded so that the Office can issue an appropriate *de novo* decision, describing how it determined the fact and the amount of the overpayment.

¹ In a September 28, 1999 decision, the Office issued a schedule award for an 11 percent permanent impairment of the left leg and a 3 percent permanent impairment of the right leg. In a January 14, 2000 decision, an Office hearing representative affirmed the Office's schedule award decision. Appellant has not appealed from that decision. In a November 1, 1999 letter, the Office informed appellant that it had made a preliminary determination that appellant had received a \$1,628.89 overpayment in compensation because life insurance premiums had not been withheld from her compensation for the period June 22, 1997 to October 9, 1999. The Office has not issued a final decision on this matter at the time of appellant's appeal to the Board so the issue of that overpayment is not before the Board on this appeal. 20 C.F.R. § 501.2.

² *Samuel Russo*, 28 ECAB 43 (1976).

The decision of the Office of Workers' Compensation Programs dated October 20, 1999 is hereby set aside and the case remanded for further action as required by this decision.

Dated, Washington, DC
July 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member