

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAMONTE SIMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 00-920; Submitted on the Record;
Issued March 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$4,981.27 for the period November 14, 1996 through February 12, 1999; (2) whether the Office abused its discretion by denying waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by withholding \$200.00 every four weeks from appellant's continuing compensation.

On April 2, 1987 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 2, 1987 he injured his left shoulder while carrying a heavy volume of mail. (The claim form does not appear to be in the record.)

The Office accepted appellant's claim for aggravation of arthritis of the left shoulder and aggravation of mild disc protrusions at C3-4, C4-5 and C5-6 with degenerative arthritis of the cervical spine.

By letter dated March 15, 1999, the Office advised appellant that a preliminary determination had been made that an overpayment of compensation had occurred in his case in the amount of \$4,981.27 because deductions for health and life insurance were not taken for the period November 14, 1996 through February 12, 1999. The Office also advised appellant that he was at fault in the creation of the overpayment. Further, the Office advised appellant that he had the right to submit any additional evidence or arguments if he disagreed that the overpayment occurred, if he disagreed with the amount of the overpayment, if he believed that the overpayment occurred through no fault of his own, or if he believed that recovery of the overpayment should be waived.

In a letter dated April 5, 1999, appellant, through his counsel, requested a prerecoupment hearing.

By decision dated September 15, 1999, the hearing representative found the evidence of record sufficient to establish that appellant was without fault in the creation of the overpayment in the amount of \$4,981.27, but insufficient to establish that waiver of the overpayment was warranted.

The Board has duly reviewed the case record in this appeal and finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$4,981.27 for the period November 14, 1996 through February 12, 1999.

The record contains evidence, which shows that health and life insurance premiums were not deducted from appellant's compensation during the overpayment period. Appellant has not shown, nor does the record otherwise establish, that the Office erred in calculating the amount of the overpayment. Therefore, an overpayment in compensation in the amount of \$4,981.27 was created.¹

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

Where an overpayment of compensation has been made because of an error of fact or law, collection of such compensation shall be waived when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Federal Employees' Compensation Act or would be against equity and good conscience.² The waiver of an overpayment of compensation by the Office is a matter that rests within its discretion to be exercised pursuant to statutory guidelines.

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, the first test under 5 U.S.C. § 8129(b) as specified in 20 C.F.R. § 10.436 provides as follows:

“Recovery of an overpayment will defeat the purpose of [the Act] if such recovery would cause hardship to a currently or formerly entitled beneficiary because--

(a) The beneficiary from whom [the] Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses.”³

Further, the Office's procedure manual provides that recovery of an overpayment will defeat the purpose of the Act if the individual's assets do not exceed the resource base of

¹ At the hearing, appellant's counsel agreed with the hearing representative that there was no question that an overpayment occurred. Further, the Board notes that neither the fact of overpayment nor the amount of the overpayment was raised on the instant appeal.

² 20 C.F.R. § 10.434.

³ 20 C.F.R. § 10.436(a).

\$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent, plus \$600.00 for each additional dependent.”⁴

Section 10.438 of the Office’s regulations provides that in requesting waiver of an overpayment, the overpaid individual has the responsibility of providing the required financial and other information needed to make a decision on waiver; that failure to furnish the information within 30 days of the request shall result in denial of waiver; and that no further requests for waiver shall be considered until such time as the requested information is furnished.⁵

In this case, appellant submitted a completed overpayment questionnaire revealing that he had \$5.41 in a credit union savings account and \$8.47 in a credit union checking account. The questionnaire also revealed monthly expenses of \$100.00 for food, \$280.00 for rent and \$19.00 for gas and oil. Appellant’s other liabilities included hospitalization benefits in the amount of \$2,541.89 and emergency room care in the amount of \$444.10. Appellant testified at the hearing that he did not have any income, but that his wife received income. The record, however, reveals that appellant receives compensation in the amount of \$403.62 every 28 days. Appellant did not submit his wife’s income tax return as requested by the hearing representative. Inasmuch as appellant did not submit the additional information, the Office properly refused to waive repayment of the overpayment under these circumstances.

With regard to the “against equity and good conscience” standard, section 10.437(b) of the regulations provides:

(a) “Recovery of an overpayment is also considered to be against equity and against good conscience when any 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. In making such a decision, [the] Office does not consider the individual’s current ability to repay the overpayment.”⁶

The evidence in this case does not establish that appellant relinquished a valuable right or changed his position for the worse in reliance on the payment of compensation. To show detrimental reliance under section 10.437(b) appellant must show that he made a decision he otherwise would not have made in reliance on the overpaid compensation and that this decision resulted in a loss.⁷ Appellant did not allege any substantial reliance on the overpayment of compensation in this case, nor was detrimental reliance shown. The Board, therefore, finds that the Office did not abuse its discretion in denying waiver of the overpayment of compensation under these circumstances.

⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Waiver of Recovery*, Chapter 6.200.6a(1)(b) (September 1994).

⁵ 20 C.F.R. § 10.438.

⁶ 20. C.F.R. § 10.437(b).

⁷ *Forrest E. Brown, II*, 44 ECAB 278, 285-86 (1992); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(b)(3) (September 1994).

As appellant has not shown that recovery would “defeat the purpose of the Act” or would “be against equity and good conscience” the Board finds that the Office properly denied waiver of recovery of the overpayment.

The Board also finds that the Office properly required repayment of the overpayment by withholding \$200.00 every four weeks from appellant’s continuing compensation.

The Office’s implementing regulations provide:

“Whenever an overpayment has been made to an individual who is entitled to further payments, ... [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.”⁸

The record establishes that appellant failed to submit the additional information regarding his wife’s income tax return, from which the hearing representative could determine what amount he could afford to repay out of his continuing compensation benefits. The hearing representative, therefore, considered the total amount of compensation appellant was receiving and determined that withholding \$200.00 every four weeks from his compensation would promptly repay the overpayment with the least amount of burden on appellant. The Board finds that the Office did not abuse its discretion in this calculation.

The September 15, 1999 decision of the Office of Workers’ Compensation Programs’ hearing representative is hereby affirmed.

Dated, Washington, DC
March 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ 20 C.F.R. § 10.441(a).