

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICK J. RYAN and DEPARTMENT OF THE AIR FORCE,  
HOMESTEAD AIR FORCE BASE, FL

*Docket No. 00-1297; Submitted on the Record;  
Issued March 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether an overpayment of \$1,199.12 was created during the period March 13 to 28, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied waiver of the overpayment.

The Office accepted that appellant sustained a right knee contusion and right meniscus tear in the performance of duty on August 5, 1997. Appellant returned to work in a light-duty position on March 13, 1998; he received compensation for wage loss through March 28, 1998.

In a letter dated February 23, 1999, the Office advised appellant that a preliminary determination had been made that an overpayment of \$1,199.12 was created. By decision dated June 21, 1999, the Office finalized the determination that an overpayment of \$1,199.12 had been created.<sup>1</sup> The Office also determined that appellant had not submitted sufficient financial information to warrant waiver of the overpayment.<sup>2</sup>

The Board has reviewed the record and finds that an overpayment of \$1,199.12 was created from March 13 to 28, 1998.

As noted above, appellant returned to a light-duty position on March 13, 1998. The Office paid compensation for temporary total disability through March 28, 1998, thereby creating an overpayment of compensation. The Office determined that the compensation paid for wage loss during this period was \$1,199.12.

The Board further finds that the Office properly denied waiver of the overpayment.

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<sup>1</sup> The record also contains a January 12, 1999 schedule award decision; appellant did not request review of this decision.

<sup>2</sup> The preliminary determination had found appellant to be at fault in creating the overpayment, but the final decision considered the waiver issue under the standard for a claimant not at fault in creating the overpayment.

Section 8129(b) of the Federal Employees' Compensation Act<sup>3</sup> provides: "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."<sup>4</sup> Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth, respectively, in sections 10.436 and 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the overpaid individual needs substantially all of his or her current income to meet current ordinary and necessary living expenses and, also, if the individual's assets do not exceed a resource base as determined by the Office from data furnished by the Bureau of Labor Statistics.<sup>5</sup> Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (1) the overpaid individual would experience severe financial hardship in attempting to repay the debt, or (2) the individual, in reliance on the payment which created the overpayment, relinquished a valuable right or changed his position for the worse.

In this case, appellant submitted an overpayment recovery questionnaire (Form OWCP-20) on March 1, 1999. The Office attempted to secure additional clarifying information, but was unsuccessful. It is appellant's obligation to submit the necessary financial information,<sup>6</sup> and therefore the June 21, 1999 decision properly denied waiver of the overpayment.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8129(b).

<sup>5</sup> The resource base is \$3,000.00 for an individual, \$5,000.00 for an individual with a spouse or one dependent, plus \$600.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6 (September 1994).

<sup>6</sup> See 20 C.F.R. § 10.438 (1999).

<sup>7</sup> This does not preclude appellant from submitting additional relevant evidence, and in fact the record indicates that subsequent development on the waiver issue was undertaken.

The decision of the Office of Workers' Compensation Programs dated June 21, 1999 is affirmed.

Dated, Washington, DC  
March 12, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member