

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSE GONZALEZ and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION, Los Angeles, CA

*Docket No. 99-2339; Submitted on the Record;  
Issued May 21, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant received an overpayment in the amount of \$2,874.12 as the Office of Workers' Compensation Programs failed to deduct premiums for health and life insurance benefits from October 27, 1996 to August 15, 1998; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly recovered the overpayment by deducting the amount of the overpayment from appellant's schedule award.

On June 21, 1995 appellant, a 45-year-old immigration detention enforcement officer, alleged that he injured his right hand when he struck it on a door while in the performance of duty. The Office accepted appellant's claim for right wrist and elbow strain and right carpal tunnel syndrome. By decision dated September 8, 1998, the Office denied appellant's claim for reflex sympathetic dystrophy and total disability causally related to his accepted employment injury.

On September 25, 1998 the Office issued a preliminary notice of overpayment in the amount of \$2,874.12 noting that it failed to deduct premiums for health and life insurance from his compensation checks from October 27, 1996 through August 15, 1998. The Office found that appellant was without fault in the creation of the overpayment. The Office informed appellant of his right to request an oral hearing and provided him with an overpayment recovery questionnaire.

Appellant returned to work on January 4, 1999 working eight hours a day. By decision dated January 7, 1999, the Office terminated appellant's compensation benefits based on his actual earnings.

By decision dated April 15, 1999, the Office found that an overpayment in the amount of \$2,874.12 occurred as the Office failed to deduct premiums for his health and optional life insurance premiums. The Office found that appellant was not at fault in the creation of the overpayment, but that appellant had not submitted any evidence to establish that he was entitled

to waiver. The Office determined to recover the overpayment by deducting the entire amount from appellant's schedule award for 20 percent permanent impairment of his right upper extremity.<sup>1</sup>

By decision dated April 21, 1999, the Office granted appellant a schedule award for 20 percent impairment of his right upper extremity.

The Board finds that there is an overpayment in the amount of \$2,874.12 in this case.

Appellant does not dispute the amount of overpayment on appeal or that it was created by the Office's failure to deduct premiums for his health and optional life insurance. Instead he argues that as he was not at fault, the overpayment should be waived.

The Board finds that the Office properly denied waiver in this case.

Regarding waiver, section 10.434 of the Office's regulations provides that, if the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

“(a) Adjustment or recovery would defeat the purposes of the [Federal Employees' Compensation] Act.<sup>2</sup>

“(b) Adjustment or recovery of the overpayment would be against equity and good conscience.”<sup>3</sup>

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purposes of the Act if the beneficiary needs substantially all his current income to meet current ordinary and necessary living expenses<sup>4</sup> and the beneficiary's assets do not exceed a specified amount as determined by the Office.<sup>5</sup> Section 10.437 provides that a recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when

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<sup>1</sup> On appeal, appellant's representative indicated that appellant was appealing only the overpayment decision. For this reason, the Board will not address the April 21, 1999 schedule award decision, the January 7, 1999 termination decision nor the September 8, 1998 decision denying appellant's claim for reflex sympathetic dystrophy. The Board notes that, after appellant's appeal to the Board on July 6, 1999, the Office issued a decision on August 31, 1999 denying appellant's claim for medical treatment. As this decision was issued after the appeal date and does not address the issue before the Board, overpayment, the Board will not address this decision. *But see Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.434.

<sup>4</sup> This occurs when monthly income does not exceed monthly expenses by more than \$50.00. *Jan K. Fitzgerald*, 51 ECAB \_\_\_ (Docket No. 98-2007, issued September 13, 2000).

<sup>5</sup> 20 C.F.R. § 10.436. This amount has been considered to be \$3,000.00 for an individual. *Fitzgerald*, *supra* note 4.

any individual in reliance on such payments gives up a valuable right or changes his or her position for the worse.<sup>6</sup>

In this case, appellant did not submit any information following the Office's preliminary determination of overpayment. Therefore, there is no financial evidence in the record supporting that appellant needs substantially all his current income to meet current ordinary and necessary living expenses nor that his assets do not exceed a specified amount as determined by the Office. There is no evidence in this case that appellant changed his position for the worse or gave up a valuable right in reliance on his compensation payments. Therefore, the Office properly denied waiver.

The Board further finds that the Office properly recovered the overpayment from appellant's schedule award.

Section 10.441(a)<sup>7</sup> provides that, if an overpayment of compensation has been made to one entitled to future payments, the Office shall decrease subsequent payments of compensation, having due regard to 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 resulting hardship upon such individual." When, as in this case, an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.<sup>8</sup> The Board finds that the Office did not abuse its discretion in following those guidelines in this case.

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<sup>6</sup> 20 C.F.R § 10.437.

<sup>7</sup> 20 C.F.R. § 10.441(a).

<sup>8</sup> *Gail M. Roe*, 47 ECAB 268, 276-77 (1995).

The April 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
May 21, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member