

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. LOGAN and U.S. POSTAL SERVICE,
POST OFFICE, Gary, IN

*Docket No. 00-986; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in compensation in the amount of \$15,018.50; (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 \$150.00 every four weeks from her continuing compensation.

On March 15, 1976 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim, alleging that factors of employment caused knee problems. The Office accepted that she sustained employment-related torn left knee meniscus, for which she underwent surgery on May 11, 1976. She retired from the employing establishment on January 24, 1977 and was placed on the periodic roll.¹ On May 25, 1999 she underwent a left total knee replacement.

By letter dated August 9, 1999, the Office issued a preliminary determination that an overpayment of compensation in the amount of \$15,018.50 occurred in appellant's case because no deduction had been made for health benefits for the period January 15, 1989 to July 17, 1999. The Office requested that appellant indicate whether she wished to contest the existence or amount of the overpayment or to request waiver of the overpayment on an attached Office form.² The Office also asked her to complete an attached overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof. The Office indicated that the

¹ The record indicates that on April 2, 1976 appellant was awarded a schedule award for a five percent permanent impairment. On July 1, 1978 she was issued an additional award, totaling 25 percent. During the period of the second schedule award, appellant opted for Office of Personnel Management (OPM) retirement benefits. She was later returned to the periodic rolls.

² The form provides a claimant with three choices: (1) A request of waiver and a telephone conference; (2) a request of waiver with the Office making the decision on the written record; and (3) a request of waiver with a hearing before the Branch of Hearings and Review. With each of these choices, a claimant is to provide supporting financial documents.

financial information would be used to determine whether appellant was entitled to waiver and that failure to submit the requested financial information within 30 days would result in a denial of waiver of the overpayment. On August 31, 1999 appellant requested waiver and a telephone conference. She returned the overpayment questionnaire without providing financial information, explaining in separate letters that the questionnaire was not relevant or applicable to the circumstances of her case.³

A telephone conference was held on September 13, 1999 between appellant and an Office claims examiner. Appellant indicated that, based on her financial circumstances, she would not qualify for waiver. She provided no financial information other than indicating that she and her husband lived in a “modest home” with no mortgage and drove old cars. The claims examiner explained that if appellant did not provide financial information, no waiver could be granted. Debt collection was discussed and the claims examiner indicated that appellant might be entitled to increased benefits. Appellant later offered \$8,000.00 in a lump sum as final settlement via compromise. On October 26, 1999 the Office presented this offer to the Solicitor of Labor. On November 1, 1999 the Solicitor of Labor indicated that the debt was enforceable.

By decision dated December 2, 1999, the Office finalized the overpayment decision. The Office determined that, while appellant was not at fault, the circumstances of appellant’s case did not warrant waiver of recovery of the overpayment as she failed to submit the necessary financial information. The Office determined that recovery of the overpayment would be made from appellant’s continuing compensation at a rate of \$150.00 every 28 days.

The Board finds that appellant received an overpayment of compensation in the amount \$15,018.50.

An overpayment in compensation based on underwithholding of health insurance or optional life insurance is subject to the waiver provisions of 5 U.S.C. § 8129, as well as other statutes and regulations relative to overpayments and collection of debts.⁴

The record in this case indicates that for the period January 15, 1989 through July 17, 1999 no deductions for health benefits were made from appellant’s compensation. The Office, therefore, properly determined that this underdeduction constituted an overpayment of compensation in the amount of \$15,018.50.

³ Appellant indicated that her car was a 1992 Oldsmobile with greater than 100,000 in mileage, that she had recently purchased a washing machine and vacuum cleaner and needed new furniture. She further indicated that she and her husband had sold a large house and bought a smaller one with no mortgage.

⁴ OPM regulations regarding the Federal Employee Health Benefits Program provide that an employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due the United States in the amount of the proper employee withholding required for that pay period. The regulations further provide that an agency that withholds less than or none of the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of 5 U.S.C., to OPM for deposit in the Employees Health Benefits Fund. *See Jennifer Burch*, 48 ECAB 633 (1997); *see FECA Bulletin No. 85-31* (issued June 4, 1985).

The Board further finds that, while appellant was not at fault in the creation of the overpayment, she is not entitled to waiver.

Section 8129(a) of the Federal Employees' Compensation Act⁵ provides that, where an overpayment of compensation has been made "because of an error of fact or law" adjustments shall be made by decreasing later payments to which an individual is entitled.⁶ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "Adjustments or recovery by the United States may not be made when incorrect payments 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."⁷

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.⁸ The Office must exercise its discretion to determine whether recovery of the overpayment would "defeat the purpose of the Act or would be against equity and good conscience," pursuant to the guidelines provided in sections 10.434-437 of the implementing federal regulations. Furthermore, section 10.438 of the federal regulations provides:

"(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, 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."⁹

In the instant case, the Board finds that, as appellant did not complete an overpayment recovery questionnaire, she is not entitled to waiver. On August 9, 1999 the Office mailed appellant an overpayment questionnaire and requested that she furnish the requested information within 30 days. While appellant submitted the questionnaire, she did not provide any financial information. Furthermore, during a September 13, 1999 telephone conference, appellant declined to provide specific financial information, indicating that she did not qualify for waiver. On November 2, 1999 the Office finalized the overpayment decision.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8129(a).

⁷ 5 U.S.C. § 8129(b).

⁸ See *William J. Murphy*, 40 ECAB 569, 571 (1989).

⁹ 20 C.F.R. § 10.438 (1999).

Without an accurate and complete breakdown of appellant's monthly income, monthly expenses and assets, supported by financial documentation, the Office was not able to calculate whether appellant's assets exceed the specified resource base.¹⁰ The Office, therefore, properly found that appellant was not entitled to waiver on the grounds that recovery would defeat the purpose of the Act.

Recovery of an overpayment is considered to be against equity and good conscience if an individual who was never entitled to benefits would experience severe financial hardship in attempting to repay the debt,¹¹ or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his or her position for the worse.¹² In this case, while appellant generally argued that because she and her husband were frugal and, therefore, had assets that prevented their entitlement to waiver, she has submitted no evidence to establish that she relinquished a valuable right or changed her position for the worse in reliance on the overpaid compensation. The Office, therefore, properly found that recovery of the overpayment would not be against equity or good conscience.

Whether to waive recovery of an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines. The issue on appeal, therefore, is whether the Office's denial of waiver constituted an abuse of discretion.¹³ As the evidence in this case fails to support that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion.

Lastly, the Board finds that the Office properly required repayment by withholding \$150.00 from appellant's continuing compensation.

With regard to the amount withheld from appellant's continuing compensation payments to recover the amount of the overpayment, section 10.441(a) of Office regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP 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.”¹⁴

¹⁰ *Gail M. Roe*, 47 ECAB 268 (1995).

¹¹ 20 C.F.R. § 10.437(a) (1999).

¹² 20 C.F.R. § 10.437(b) (1999).

¹³ *James M. Albers, Jr.*, 36 ECAB 340, 344 (1984) and cases cited therein at note 5.

¹⁴ 20 C.F.R. § 10.441(a) (1999).

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.¹⁵ The Board finds that the Office did not abuse its discretion in following those guidelines in this case.

The November 2, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 22, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4.d(1)(b) (September 1994).