

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY G. WRIGHT and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 00-543; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$193.51 from May 30, 1994 through September 11, 1999 because the correct life insurance premiums were not deducted from his compensation; and (2) whether the Office abused its discretion in denying waiver of the overpayment after finding that appellant was without fault in the creation of the overpayment.

On June 18, 1991 appellant, a 56-year-old mail carrier, filed a claim for benefits, which the Office accepted for cervical strain, right trapezius muscle strain and right shoulder impingement on February 18, 1993. Appellant has not worked since December 4, 1992.

On September 10, 1999 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$193.51 from May 30, 1994 through September 11, 1999 because the correct form of optional life premiums had not been deducted. The Office found that appellant was without fault because he could not have been aware that the payments he had been receiving were incorrect.

The Office advised appellant that if he disagreed with the fact or amount of the overpayment he could submit new evidence in support of his contention that recovery of the overpayment might not be made if appellant showed that such recovery would defeat the purpose of the law or be against equity and good conscience, and that he had the right to request a precoupment hearing on the overpayment. Any response appellant wished to make with regard to the overpayment should be submitted within 30 days of the September 10, 1999 letter.

In a decision dated October 13, 1999, the Office found that appellant was not entitled to waiver. The Office noted that appellant had been advised by letter dated September 10, 1999, that a preliminary finding had been made that an overpayment had occurred, but that as of the date of the final decision he had not responded.

The Board finds that the Office properly determined that appellant received an overpayment of \$193.51. The record shows that appellant received augmented compensation during the period in question because the Office did not deduct the correct form of life insurance premiums from his compensation. The Office calculated the amount of overpayment by taking the amount that had been incorrectly withheld from his biweekly compensation from May 30, 1994 through September 11, 1999, \$625.79 and subtracting this figure from the correct amount for which appellant was responsible during this period, \$819.74, which amounted to an overpayment of \$193.51. Based on this determination, the Office properly found that appellant received an overpayment of compensation in the stated amount during that period.

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

Section 8129 of the Federal Employees Compensation Act¹ provides that an overpayment must be recovered unless “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.” Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment. The Office must then 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 10.436² and 10.437³ of the implementing federal regulations.

Section 10.436 of the regulations provides:

“Recovery of an overpayment will defeat the purpose of the A[ct] 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; and

“(b)The beneficiary ‘s assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.”

Section 10.437 of the regulations provides:

“(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

¹ 5 U.S.C. § 8129(a)-(b).

² 20 C.F.R. § 10.436.

³ 20 C.F.R. § 10.437.

“(b) Recovery of an overpayment is also considered to be against equity and 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] O[ffice] does not consider the individual’s current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual’s position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits and that this decision resulted in a loss.”

Finally, Section 10.438 of the Office’s regulations⁴ provides that:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the] O[ffice]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the A[ct], 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 the waiver and no further request for waiver shall be considered until the requested information is furnished.”

In this case, appellant did not submit any information regarding his financial situation in response to the Office’s September 10, 2000 letter regarding his overpayment of compensation. Appellant thus failed to show that he needs substantially all of the current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed. Therefore, he does not qualify for waiver under the “defeat the purpose of the Act” standard.⁵

Further, there is no evidence in this case, nor did appellant allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received from May 30, 1994 through September 11, 1999. Accordingly, the Office properly found that appellant’s failure to respond to its September 10, 2000 letter by submitting the requested financial information was sufficient grounds to find that he does not qualify for

⁴ 20 C.F.R. § 10.438.

⁵ See *Nina D. Newborn*, 47 ECAB 132 (1995).

waiver. Pursuant to its regulations, the Office, therefore, acted within its discretion in denying waiver of recovery of the overpayment.

The October 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member