

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILDRED O. ZEPORA and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 00-873; Submitted on the Record;
Issued September 5, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant received a \$3,400.19 overpayment of compensation; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to waive recovery of the overpayment.

On September 20, 1991 appellant, then a 48-year-old casual mail clerk, sustained an employment-related left shoulder strain, cervical strain and left shoulder impingement. Appellant received compensation for periods of disability. By decision dated September 19, 1996, the Office reduced appellant's compensation to zero effective October 25, 1994 on the grounds that she had no loss of wage-earning capacity due to her capacity to earn wages as a cashier checker. By decision dated and finalized January 22, 1998, the Office affirmed its September 19, 1996 decision.¹ By decision dated July 21, 1999, the Office determined that appellant received a \$3,400.19 overpayment of compensation. The Office further determined that appellant was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver.

The Board finds that appellant received a \$3,400.19 overpayment of compensation.

In the present case, the Office used an incorrect wage-earning capacity amount when it calculated appellant's entitlement to compensation for the period January 1 to December 31, 1993. The evidence of record reflects that the Office used the amount \$25.84 per week when it should have used the amount \$110.77 in its calculations. Consequently, appellant received a \$6,358.76 check for this period when she should have received a \$2,958.57 check. Therefore, the Office properly determined that appellant received a \$3,400.19 overpayment.

¹ The Office's decisions regarding appellant's wage-earning capacity are not the subject of the present appeal as they were not issued within one year of the filing of the present appeal with the Board; *see* 20 C.F.R. § 501.3(d)(2).

The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.² These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "Adjustment or recovery [of an overpayment] 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 this subchapter or would be against equity and good conscience."³ Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.438 of the Office's regulations provides:

"(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act 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."⁴

The Office properly determined that appellant did not establish entitlement to waiver of the overpayment under the above-described standards. Appellant submitted some financial information to the Office but she did not provide sufficient financial information within the appropriate time period to show that she was entitled to waiver of the overpayment.⁵ In particular, appellant did not submit sufficient information or documentation to support her claimed monthly expenses. On several occasions prior to the issuance of its July 21, 1999 decision, the Office attempted to make arrangements for appellant to provide additional financial information and documentation. However, it does not appear from the record that appellant adequately cooperated with these efforts. Under these circumstances, it has not been shown that recovery of the overpayment would defeat the purpose of the Act or be against equity and good

² See *Robert Atchison*, 41 ECAB 83, 87 (1989).

³ 5 U.S.C. § 8129(b).

⁴ 20 C.F.R. § 10.438.

⁵ Appellant submitted information indicating that she had \$797.40 in monthly income; she also indicated that she had \$797.00 in monthly expenses which included \$350.00 in food and \$127.00 in "other expenses." She submitted another similar list which itemized her "other expenses" but she did not submit any documentation in support thereof.

conscience and it was appropriate for the Office to determine that appellant was not entitled to waiver of the overpayment.

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

Dated, Washington, DC
September 5, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member