

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY T. HADDEN and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 00-1063; Submitted on the Record;  
Issued September 24, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received a \$792.55 overpayment of compensation from October 12, 1992 through January 7, 1995; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly recovered the overpayment by withholding \$100.00 from continuing compensation payments.

On May 11, 1992 appellant, then a 33-year-old carrier filed a claim alleging that she developed a left shoulder condition as a result of performing her employment duties. The Office accepted appellant's claim for impingement syndrome of the left shoulder and rotator cuff tear of the left shoulder. The Office authorized the following procedures: an arch decompression, bursectomy and acromioplasty of the left shoulder.

Appellant has been totally disabled since October 12, 1992 and has received wage-loss compensation for total disability since this time.

In a February 16, 1995 overpayment worksheet, the Office calculated that health benefit premiums of \$2,146.06 were deducted from appellant's compensation for the period of October 12, 1992 to January 7, 1995. The Office also calculated that the health benefit premiums which should have been deducted from appellant's compensation were \$2,938.61 during this period. The Office calculated that this resulted in a \$792.55 overpayment.

On August 19, 1999 the Office made a preliminary finding that appellant had been overpaid benefits in the amount of \$792.55. The Office noted that the overpayment occurred because of an incorrect deduction of health benefit premiums. Health benefit premiums were deducted for plan 322 instead of plan CF2 and CC2 from October 12, 1992 to January 7, 1995. The Office also determined that appellant was without fault in the matter of the overpayment. The Office indicated that appellant had the right to submit, within 30 days, evidence or arguments regarding the overpayment and her eligibility for waiver of the overpayment.

In a letter dated August 31, 1999, appellant indicated that she believed she was entitled to a waiver of the overpayment as the fault of the overpayment was with the Department of Labor.

In a letter dated September 21, 1999, the Office responded to appellant's August 31, 1999 letter and indicated appellant was without fault in the overpayment. However, in order to determine appellant's eligibility for a waiver of the overpayment, the Office requested that appellant submit an overpayment recovery questionnaire and provide any supporting documents in support of her request for a waiver. Appellant did not submit an overpayment recovery questionnaire or provide any supporting documents in support of her request for a waiver of the overpayment.

By decision dated October 28, 1999, the Office found that appellant received a \$792.55 overpayment of compensation from October 12, 1992 to January 7, 1995 for which she was without fault in creating. In an accompanying memorandum, the Office indicated that no additional financial evidence or argument was submitted by appellant to support eligibility for waiver and therefore, waiver of overpayment was not granted. The Office advised that the overpayment would be recovered by deducting \$100.00 from appellant's continuing compensation payments every 4 weeks.

The Board finds that appellant received an overpayment of \$792.55 in compensation from October 12, 1992 to January 7, 1995.

The record indicates that appellant was overpaid benefits as a result of an incorrect deduction of health benefit premiums. Health benefit premiums of \$2,146.06 were deducted for plan 322 instead of the appropriate amount of \$2,938.61 for plan CF2 and CC2 for the period of October 12, 1992 to January 7, 1995. Consequently appellant received an overpayment for this period. The Office properly determined that for the period of October 12, 1992 to January 7, 1995 appellant received an overpayment of \$792.55. Appellant does not dispute that she received the overpayment in question and the Board finds that the Office properly determined the amount of the overpayment that covered the period of October 12, 1992 to January 7, 1995.

The Board further finds that the Office did not abuse its discretion in denying waiver of the overpayment and setting the rate of recovery at \$100.00 per month from her continuing compensation benefits.

Section 8129 of the Act<sup>1</sup> 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." (Emphasis added.) Thus, a finding that appellant was without fault does not automatically result in waiver of 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.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8129(a)(6).

<sup>2</sup> See *James M. Albers, Jr.*, 36 ECAB 340 (1984).

Section 10.322 of the implementing federal regulations<sup>3</sup> provides that “[r]ecovery of an overpayment will defeat the purpose of the Act if recovery would cause undue hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section,” and outlines the specific financial circumstances under which recovery may be considered to “defeat the purpose of the Act.” Section 10.324 of the regulations<sup>4</sup> provides that “[i]n requesting waiver of an overpayment ... the overpaid individual has the responsibility for providing the financial information described in section 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of the request shall result in denial of waiver....”

Appellant was advised by the Office to provide the necessary financial information by completing the overpayment recovery questionnaire issued on August 19, 1999 if she wanted to request waiver. Appellant indicated in her August 13, 1999 letter to the Office that she was not responsible for the overpayment and that it should be waived; however, a copy of the OWCP-20 form was not submitted. As a result, the Office did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of the Act.<sup>5</sup> With respect to whether recovery would be against equity and good conscience, section 10.323(b) of the federal regulations provides that “[r]ecovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse.” Appellant has not alleged and the evidence does not demonstrate that she relinquished a valuable right or changed her position for the worse in reliance on the overpayments. The Office properly denied waiver of recovery of the overpayment.

The Board further finds that the Office properly recovered the overpayment by withholding the \$100.00 from appellant’s continuing compensation payments every four weeks.

The Offices implementing regulations provide:

“Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing 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.”<sup>6</sup>

The record establishes that appellant failed to submit an overpayment recovery questionnaire or any other evidence from which the Office could determine what amount

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<sup>3</sup> 20 C.F.R. § 10.322.

<sup>4</sup> 20 C.F.R. § 10.324.

<sup>5</sup> See 20 C.F.R. § 10.324 (1998) (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>6</sup> 20 C.F.R. § 10.321(a). See *Fred A. Cooper, Jr.*, 44 ECAB 498 (1993); *Roger Seay*, 39 ECAB 441 (1988).

appellant could afford to repay out of her continuing compensation benefits.<sup>7</sup> The Office, therefore, considered the total amount of compensation appellant was receiving and determined that a \$100.00 withholding every four weeks from compensation would promptly repay the overpayment with the least amount of burden on appellant.

The decision of the Office of Workers' Compensation Programs dated October 28, 1999 is affirmed.

Dated, Washington, DC  
September 24, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> See 20 C.F.R. § 10.321(h) which provides that if additional financial information is not submitted or a prerecoumpment hearing is not requested, within 30 days of the Office's preliminary overpayment determination, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The overpaid individual has the responsibility for providing the financial information as the Office may require. See *Connie L. Potratz-Hasson*, 42 ECAB 359 (1991).