

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NETA M. McOMIE and U.S. POSTAL SERVICE,
POST OFFICE, Salt Lake City, UT

*Docket No. 00-2132; Submitted on the Record;
Issued September 4, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
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 \$714.16; (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 \$185.00 every four weeks from her continuing compensation.

On January 8, 1997 the Office accepted that appellant, then a 48-year-old clerk, sustained an employment-related anxiety condition and she was placed on the periodic rolls. On March 27, 2000 the Office issued a preliminary determination that an overpayment of compensation in the amount of \$714.16 occurred in appellant's case because incorrect deductions had been made for health benefits for the period January 3, 1999 to February 26, 2000. 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.¹ 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 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. By decision dated May 4, 2000, 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 \$185.00 every 28 days.

¹ 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.

The Board finds that appellant received an overpayment of compensation in the amount \$714.16.

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.²

The record in this case indicates that, for the period January 3, 1999 through February 26, 2000, incorrect deductions for health benefits were made from appellant's compensation.³ The Office, therefore, properly determined that this underdeduction constituted an overpayment of compensation in the amount of \$714.16.

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 Act⁴ 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.⁵ 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."⁶

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.⁷ 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 [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.

² See FECA Bulletin No. 85-31 (issued June 4, 1985); *James Lloyd Otte*, 48 ECAB 334 (1997); *Glen B. Cox*, 42 ECAB 703 (1991).

³ The record indicates that in January 1999 appellant's health insurance carrier, Pacific Care of Utah, merged with Altius. The Office was not informed of this change until March 2000, and premiums for appellant's health insurance had been withheld at an incorrect amount for the period January 3, 1999 to February 26, 2000.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8129(a).

⁶ 5 U.S.C. § 8129(b).

⁷ *James Lloyd Otte*, *supra* note 2; see *William J. Murphy*, 40 ECAB 569, 571 (1989).

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.”⁸

In the instant case, the Board finds that, as appellant did not complete an overpayment recovery questionnaire, she is not entitled to waiver. On March 27, 2000 the Office mailed appellant an overpayment questionnaire and requested that she furnish the requested information within 30 days. Appellant did not respond, and on May 4, 2000 the Office finalized the overpayment decision.⁹ Without an accurate and complete breakdown of appellant’s monthly income, monthly expenses and assets, supported by financial documentation, the Office is 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 Appellant, however, 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.

⁸ 20 C.F.R. § 10.438 (1999).

⁹ The Board notes that, by letter dated April 10, 2000 that was stamped received by the Office on May 16, 2000, appellant stated that she was exercising her right of appeal. She attached the overpayment questionnaire. By letter dated May 18, 2000, the Office informed appellant that she must follow the appeal rights given in the May 4, 2000 decision. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

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.

Lastly, the Board finds that the Office properly required repayment by withholding \$185.00 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 [the Office] 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, [the Office] 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

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 decision of the Office of Workers' Compensation Programs dated May 4, 2000 is hereby affirmed.

Dated, Washington, DC
September 4, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ 20 C.F.R. § 10.441(a) (1999).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6-0200.4.d(1)(b) (September 1994).