

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA RODENBAUGH and U.S. POSTAL SERVICE,
POST OFFICE, Mount Holly, NJ

*Docket No. 00-1071; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$4,886.81 for the period April 10, 1996 through December 5, 1997; and (2) whether the Office properly determined that appellant was not entitled to a waiver of recovery of the overpayment.

By letter dated July 12, 1999, the Office advised appellant that she had received an overpayment of benefits in the amount of \$4,886.81. The Office explained that the overpayment resulted from the use of an incorrect weekly pay rate of \$756.35. Additionally, the Office noted the correct weekly pay rate at the time appellant ceased work on March 18, 1996 was \$666.27. The Office further advised appellant that she was not at fault in creating the overpayment. Additionally, appellant was apprised of her rights to challenge the Office's determination and to request a waiver of overpayment.

By decision dated September 15, 1999, the Office finalized the July 12, 1999 determination regarding appellant's overpayment of \$4,886.81. The Office noted that appellant did not respond to the July 12, 1999 notification. Moreover, as appellant was in receipt of continuing compensation, the Office advised appellant that effective October 9, 1999 it would commence deducting \$200.00 from her monthly compensation payments.

The Board finds that the case is not in posture for a decision.

Under section 8129 of the Federal Employees' Compensation Act and the implementing regulations, 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.¹

¹ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437 (1999); *see James H. Hopkins*, 48 ECAB 281, 287 (1997); *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

As previously noted, the Office stated in its September 15, 1999 decision that appellant had not responded to its July 12, 1999 notice of overpayment. In light of appellant's purported failure to respond, the Office determined that the overpayment would be recouped by withholding \$200.00 from appellant's continuing compensation. However, the record reveals that on July 23, 1999, appellant requested a waiver of overpayment and also requested a telephone conference with the district Office. Additionally, she provided some information regarding her monthly expenses. Appellant's July 23, 1999 correspondence was date stamped as being received by the Office on July 30, 1999.² As the Office failed to properly respond to appellant's July 23, 1999 request for a telephone conference and a waiver of overpayment, the case is remanded to the Office for further proceedings.

The September 15, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further consideration consistent with this opinion.

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

² The record also includes an overpayment recovery questionnaire and additional information regarding appellant's monthly income, savings and expenses. This information, however, was not reviewed by the Office prior to the issuance of its September 15, 1999 decision.