

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE T. WEAVER and U.S. POSTAL SERVICE,  
POST OFFICE, Albany, NY

*Docket No. 01-2172; Submitted on the Record;  
Issued April 12, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issues are: (1) whether appellant received a \$1,184.37 overpayment of compensation for the period October 12, 1992 to June 17, 2000; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to waive recovery of the overpayment.

In June 1992, appellant, then a 46-year-old distribution clerk, filed an occupational disease claim alleging that he sustained right carpal tunnel syndrome due to the repetitive duties of his job. The Office accepted that appellant sustained right bilateral carpal tunnel syndrome and right C7 radiculopathy and paid compensation for periods of disability. By decision dated June 13, 2001, the Office determined that appellant received a \$1,184.37 overpayment of compensation for the period October 12, 1992 to June 17, 2000. 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 \$1,184.37 overpayment of compensation for the period October 12, 1992 to June 17, 2000.

In the present case, appellant received compensation for the period October 12, 1992 to June 17, 2000 but did not have required deductions made for basic life insurance premiums during this period. The record contains evidence which shows that the Office failed to deduct \$1,184.37 for basic life insurance premiums during the period October 12, 1992 to June 17, 2000. Therefore, the Office properly determined that appellant received a \$1,184.37 overpayment.<sup>1</sup>

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

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<sup>1</sup> The record contains a letter which suggests that the Office was not required to deduct basic life insurance premiums.

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.<sup>2</sup> These statutory guidelines are found in section 8129(b) of the 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."<sup>3</sup> 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.<sup>4</sup>

Section 10.436 of the Office's regulations<sup>5</sup> provides:

"Recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) [t]he 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) [t]he beneficiary's assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics...."

Section 10.437<sup>6</sup> states that recovery of an overpayment is also considered to be against good conscience if the 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.

The Office requested that appellant provide financial information if he wished to claim waiver of the overpayment. Section 20 C.F.R. § 10.438 states:

"(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.

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<sup>2</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>3</sup> 5 U.S.C. § 8129(b).

<sup>4</sup> Appellant argued that the overpayment should be waived because he was not found to be at fault in its creation but he would only be entitled to such waiver if it were shown, under the standards described below, that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

<sup>5</sup> 20 C.F.R. § 10.436.

<sup>6</sup> 20 C.F.R. § 10.437.

“(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.”

Although appellant was provided with the opportunity, he submitted no financial evidence to establish that recovery of the overpayment would defeat the purpose of the Act. Absent evidence documenting appellant’s financial status, the Office cannot determine whether appellant is entitled to waiver and waiver cannot be granted.<sup>7</sup> Further, appellant has not shown that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received. Accordingly, the Office properly determined that appellant was not entitled to a waiver of the overpayment in this case.

The June 13, 2001 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC  
April 12, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>7</sup> *Id.*