

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH W. HUDGINS and DEPARTMENT OF THE ARMY,
FACILITY ENGINEERS DIRECTORATE, Fort Huachuca, AZ

*Docket No. 02-816; Submitted on the Record;
Issued August 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether an overpayment of \$2,423.94 occurred from December 8, 1996 through December 30, 2000; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of the overpayment and in seeking its recovery in full.

In the prior appeal of this case,¹ the Board found that the Office had not met its burden of proof to justify the termination of appellant's compensation. The Board reversed the Office's decision terminating compensation and remanded the case for reinstatement of benefits retroactive to the effective date of termination.²

The record shows that effective February 1, 1984 appellant elected postretirement basic life insurance at no reduction and with both additional and family options. On October 25, 1984 he canceled the additional and family options, leaving him with basic life only at no reduction. Following the Board's decision, the Office paid retroactive compensation from June 26, 1994 through December 7, 1996, less reimbursement to the Office of Personnel Management for annuities paid during the same time. When the Office placed appellant on the periodic rolls on December 8, 1996, however, it neglected to deduct premiums for appellant's postretirement life insurance. After appellant alerted the Office that his benefit statement showed no deduction for life insurance, the Office began deducting premiums on December 31, 2000 for postretirement basic life only at no reduction.

On February 16, 2001 the Office issued a preliminary determination that an overpayment of \$2,423.94 occurred from December 8, 1996 through December 30, 2000 because it failed to deduct premiums for postretirement life insurance from appellant's compensation payments. The Office found that appellant was not at fault in the matter of the overpayment. The Office

¹ Docket No. 95-289 (issued May 22, 1996).

² The facts of this case as set forth by the Board's prior decision are hereby incorporated by reference.

advised appellant to fully complete and submit the enclosed overpayment recovery questionnaire and to attach any supporting documents in his possession:

“The financial documents that you submit should include income tax returns, bank account statements, bills and cancelled checks reflecting payments, pay slips and other records to support income and expenses listed on the enclosed questionnaire. This financial information is necessary to assist this office in deciding whether or not to waive the overpayment. In the event that waiver is not granted, this information will be used to decide how to recover the overpayment.”

Appellant requested a prerecoupment hearing before an Office hearing representative. He submitted an overpayment recovery questionnaire indicating that he had monthly income of \$665.00 in Social Security benefits, but he indicated that other income, monthly expenses and assets were “not applicable.” He provided no documentation to support his financial status. Appellant instead argued that he should not have to pay for coverage he did not have. On September 26, 2001 he advised the Office that he did not wish to appear at a hearing because the Office had all the information to make a decision on the facts.

In a decision dated December 20, 2001, an Office hearing representative found that an overpayment of \$2,423.94 occurred from December 8, 1996 through December 30, 2000 because the Office failed to deduct premiums for postretirement life insurance from appellant’s compensation payments. The hearing representative explained that appellant’s insurance coverage continued notwithstanding the failure to withhold deductions.³ The hearing representative also found that appellant was without fault in the creation of the overpayment.

The hearing representative denied waiver of the overpayment. Appellant asserted no financial hardship in having to repay the overpayment, nor did he assert that he had relinquished a valuable right or changed his position for the worse in reliance on the overpayment. Because appellant provided no financial information as requested, the hearing representative was unable to find appellant eligible for waiver and was unable to set a rate of recovery that would minimize any hardship.

The Board finds that an overpayment of \$2,423.94 occurred from December 8, 1996 through December 30, 2000.

When the Office reinstated appellant’s compensation benefits following the Board’s prior decision, it neglected to deduct premiums for appellant’s postretirement basic only life insurance. This did not mean that appellant had no coverage: He had properly elected coverage with additional and family options but later canceled the optional insurance, leaving him with postretirement basic only. As the Office explained, his coverage continued notwithstanding the Office’s failure to deduct premiums, and appellant’s correspondence to the Office following reinstatement of his compensation benefits showed his belief that he had life insurance coverage

³ In a February 16, 2001 letter to appellant’s congressman, the Office noted that eligibility for coverage under the federal employee life insurance programs must be continuous. Appellant had coverage during the entire period had any benefits been claimed. His coverage was not canceled simply because the Office erroneously failed to deduct the premiums.

and that the Office should have been deducting premiums. The Office's failure to do so created an overpayment of \$2,423.94 from December 8, 1996 through December 30, 2000.⁴

The Board also finds that the Office properly denied waiver of the overpayment.

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁵ If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Federal Employees' Compensation Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁶

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.⁷

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

Although appellant is without fault in the matter of the overpayment, he nonetheless bears responsibility for providing the financial information necessary to support a waiver of the overpayment. He submitted an overpayment recovery questionnaire but offered no information on expenses or assets and provided none of the financial documentation requested. Because he failed to disclose this information, the Office could not determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. The Board finds, therefore, that the Office acted within its discretion in denying waiver of the overpayment and in seeking its recovery in full.

⁴ The calculation of the overpayment is detailed in a January 18, 2001 work sheet attached to the preliminary determination of February 16, 2001.

⁵ 20 C.F.R. § 10.433(a) (1999).

⁶ *Id.* at § 10.434. Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the 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) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents. *Id.* at § 10.436. Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt. *Id.* at § 10.437(a). Recovery of an overpayment is also considered to be against equity and good conscience when any 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. *Id.* at § 10.437(b).

⁷ *Id.* at § 10.438(a).

⁸ *Id.* at § 10.438(b).

The December 20, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 15, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member