

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALBERT S. CALDARELLI and U.S. POSTAL SERVICE,  
PROCESSING & DELIVERY CENTER, Pittsburgh, PA

*Docket No. 02-2000; Submitted on the Record;  
Issued December 16, 2002*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied waiver of an overpayment in the amount of \$770.42.

Appellant, a 39-year-old clerk, filed a notice of traumatic injury on April 21, 2000 alleging that on that date he injured his right knee in the performance of duty. The Office accepted appellant's claim for right knee dislocation and arthroscopy. Appellant underwent surgery on September 21, 2000 and stopped work on that date.

Appellant submitted a claim for compensation on November 14, 2000 indicating that he earned \$155.66 per day on September 21, 2000 the date that he stopped work and that he was entitled to \$15.56 per day for night differential and \$38.91 per week for Sunday pay. The Office authorized compensation benefits from September 21 to November 4, 2000 in the amount of \$5,074.82 based on a weekly wage of \$1,050.75 per week.

On November 5, 2000 the Office reduced appellant's compensation benefits to reflect his true salary of \$895.11 per week. In a letter dated November 19, 2001, the Office stated that appellant had received an overpayment in the amount of \$770.42 from September 21 to November 4, 2000 as he was paid at the incorrect pay rate of \$1,050.75 per week rather than his actual salary of \$895.11 per week. The Office stated that appellant received \$5,201.20 and that he was entitled to receive \$4,430.78 with an overpayment of \$770.42. The Office found that appellant was not at fault in the creation of the overpayment and provided him with the steps necessary to request waiver of the overpayment.

The Office did not receive a response from appellant regarding his disagreement with the amount of the overpayment nor did the Office receive a request for waiver nor the requested financial information. By decision dated June 24, 2002, the Office found that appellant had received an overpayment in the amount of \$770.42, that he was not at fault as he had been paid at the incorrect pay rate from September 21 to November 4, 2000, and that as appellant had not requested waiver nor submitted any financial information, payment was requested in full.

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

Regarding waiver, section 10.434 of the Office's regulations provides that if the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

“(a) Adjustment or recovery of the overpayment would defeat the purposes of the [Federal Employees' Compensation Act<sup>1</sup>], or

“(b) Adjustment or recovery of the overpayment would be against equity and good conscience.”<sup>2</sup>

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purposes of the Act if the beneficiary needs substantially all his current income to meet current ordinary and necessary living expenses<sup>3</sup> and the beneficiary's assets do not exceed a specified amount as determined by the Office.<sup>4</sup> Section 10.437 provides that a recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when any individual in reliance on such payments gives up a valuable right or changes his or her position for the worse.<sup>5</sup>

Appellant failed to request waiver from the Office and failed to provide any financial information to the Office. The Office's regulations provide that failure to provide the requested information regarding income, expenses and assets within 30 days of the request shall result in denial of waiver, and that no further request for waiver shall be considered until the requested information is furnished.<sup>6</sup> As there is no evidence of appellant's financial status in the record, the Office had no means to apply the waiver provisions to determine if appellant was in fact entitled to waiver of the overpayment in the amount of \$770.42.

Section 10.441(a)<sup>7</sup> provides that, if an overpayment of compensation has been made to one entitled to future payments, an immediate refund of the overpayment should be made and that if no refund is forthcoming then proper adjustment shall be made by decreasing subsequent payments of compensation, considering “the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.434.

<sup>3</sup> This occurs when monthly income does not exceed monthly expenses by more than \$50.00. *Jan K. Fitzgerald*, 51 ECAB 659, 661 (2000).

<sup>4</sup> 20 C.F.R. § 10.436. This amount has been considered to be \$3,000.00 for an individual. *Fitzgerald*, *supra* note 3.

<sup>5</sup> 20 C.F.R. § 10.437.

<sup>6</sup> 20 C.F.R. § 10.438.

<sup>7</sup> 20 C.F.R. § 10.441(a).

to minimize any resulting hardship.” 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.<sup>8</sup> The Board finds that the Office did not abuse its discretion in following those guidelines in this case.

The June 24, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 16, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> *Gail M. Roe*, 47 ECAB 268, 276 (1995).