

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK ARTERS and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY CENTER, Norfolk, VA

*Docket No. 01-1237; Submitted on the Record;
Issued February 27, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment occurred in the amount of \$2,136.56; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly recovered the overpayment.

On March 13, 1996 appellant, a 53-year-old electrician, injured his right knee in the performance of duty. The Office accepted the claim for a lateral meniscus tear in the right knee. Appellant received a schedule award for a 37 percent impairment of the right lower extremity.

On December 15, 1999 the Office made a preliminary determination that an overpayment had occurred in the amount of \$2,136.56 because the Office failed to make deductions from appellant's compensation benefits for health and life insurance. The Office noted that it had failed to make deductions for health and life insurance from appellant's schedule award payments for the period May 21 to October 9, 1999.¹ After October 9, 1999 the Office interrupted appellant's schedule award and began paying wage-loss compensation based on a recurrence of disability. It was noted, however, that for the period October 9, 1999 until April 23, 2000 the Office similarly failed to make deductions for life insurance.

The December 15, 1999 preliminary notice found that appellant was not at fault in the creation of the overpayment. He was advised that, if he disagreed with the amount of the overpayment, he could submit additional evidence or argument. Appellant was also informed of his right to request waiver of the overpayment, to request a precoupment hearing, or to request a final decision based on a review of the written record.

¹ The record indicates that health and life insurance coverage had been reported on the Form CA-7 wage-loss claim filed for a recurrence of disability by appellant on June 21, 1999. At that time appellant was scheduled for further knee surgery.

In a March 9, 2001 decision, the Office noted that no reply had been received from appellant with respect to the preliminary overpayment notice. The Office found that appellant was not entitled to waiver of the overpayment. The Office advised him that the overpayment sum of \$2,136.56 would be withheld from the compensation payment due him for the period December 14, 2000 to February 3, 2001, effective March 16, 2001.

The Board finds that the Office properly determined that appellant received an overpayment of compensation of \$2,136.56, since the Office failed to deduct premiums for basic life and health insurance from his compensation benefits during the period May 21, 1999 to April 23, 2000. The Board notes that appellant has not challenged the amount of the overpayment on appeal.

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

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.² These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation 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 which is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience."³ Since the Office found appellant to be without fault in the creation 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.

Section 10.436 of the implementing regulations⁴ provides that 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 or 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.⁵ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁶

² See *Robert Atchison*, 41 ECAB 83 (1989).

³ 5 U.S.C. § 8129(b).

⁴ 20 C.F.R. § 10.436 (1999).

⁵ An individual's assets must exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. See *Robert F. Kenney*, 42 ECAB 297 (1991).

⁶ See *Demitri J. Fasi*, 49 ECAB 278 (1998); *Leticia C. Taylor*, 47 ECAB 198 (1995).

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.⁷

Under section 10.438 of the regulations it states that “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 on an overpayment would defeat the purpose of Act, or be against equity and good conscience.”⁸

In this case, appellant did not complete an overpayment questionnaire as requested by the Office, nor did he provide any financial information to show that recovery of the overpayment would defeat the purpose of the Act. Appellant has not alleged and the evidence does not demonstrate that he relinquished a valuable right or changed his position for the worse in reliance on the erroneous amount of compensation benefits received in this case without deduction of appropriate health and life insurance premiums. Because appellant has not shown that recovery would “defeat the purpose of the Act” or would “be against equity and good conscience” the Board finds that the Office properly denied waiver of recovery of the overpayment.

The Board also finds that the Office acted properly in deciding to recoup the overpayment by deducting the amount from appellant’s continuing compensation.

The method by which the Office may recover overpayments is defined by regulation. The applicable regulation, 20 C.F.R. § 10.441(a), provides as follows:

“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 minimize any hardship....”

In the present case, the Office requested that appellant provide financial information to enable it to determine the rate of recovery of the overpayment having due regard to the factors noted above. Appellant, however, did not provide any information as requested to indicate that his financial circumstances were such that recovery of the overpayment from his continuing

⁷ 20 C.F.R. § 10.437 (1999).

⁸ 20 C.F.R. § 10.438 (1999).

compensation would cause him undue financial hardship.⁹ The Office's procedure manual notes that if a claimant is being paid compensation or is due accrued benefits from the Office and does not respond to the preliminary overpayment decision, the debt should be recovered from such benefits as quickly as possible.¹⁰ The Board, therefore, finds that the Office did not abuse its discretionary authority in determining that the overpayment sum of \$2,136.56 would be deducted from appellant's due and accrued compensation benefits.

The decision of the Office of Workers' Compensation Programs dated March 9, 2001 is hereby affirmed.

Dated, Washington, DC
February 27, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

⁹ In establishing the initial collection strategy, the Office must weigh the individual's income, ordinary and necessary expenses and assets in a manner similar to the waiver considerations. When an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collections 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. *Gail M. Roe*, 47 ECAB 268 (1995); *see Nina D. Newborn*, 47 ECAB 132 (1995).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).