

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JORGE O. DIAZ and DEPARTMENT OF THE ARMY,
ROCK ISLAND ARSENAL, Rock Island, IL

*Docket No. 00-1368; Submitted on the Record;
Issued March 4, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to waive imposition of interest or compromise principal on his overpayment debt.

The case has been on appeal previously.¹ In an October 13, 1999 decision, the Board noted that appellant had received temporary total disability compensation benefits from the Office and veterans disability benefits from the Department of Veterans Affairs for the period April 16, 1992 through June 25, 1994 for post-traumatic stress disorder, which was caused by his military service in Vietnam and aggravated due to harassment at work. The Board found that appellant could not receive compensation benefits from the same condition from both agencies and concluded that he had received a \$53,666.90 overpayment in compensation. Although appellant was found without fault in creation of the overpayment, the Board further found that the Office had properly refused appellant's request for waiver of recovery of the overpayment.

In a September 25, 1996 calculation of a repayment schedule for the overpayment, the Office indicated that there would be an interest charge of \$17,214.68 on the overpayment. The Office indicated that the period necessary to repay the debt, at \$500.00 a month, was 142.57 months which was less than appellant's expected life expectancy of 372 months. The Office concluded, therefore, that the interest charge could not be waived. The Office noted that compromise of the accrued principal and interest must be considered if the application of charges would increase the period of indebtedness by more than 35 percent. The Office found that the debt without charges would take 107.33 months to repay of which 35 percent would be 37.57 months. The Office stated that the debt with charges must be repaid within 144.9 months. The Office concluded that since the debt would take 142.57 months to repay, no compromise of the accrued interest charge or principal was necessary.

¹ Docket No. 97-334 (issued October 13, 1999). The history of the case is contained in the prior decision and is incorporated by reference.

In a November 3, 1999 letter, appellant requested reconsideration of the imposition of the interest charge on the overpayment. He stated that the Office had delayed, stalled or given no response to questions. Appellant contended that the Office had failed to conduct research on appellant's case causing inaccurate decisions. He argued that the lack of communication among federal agencies had led to the redundant assistance. Appellant indicated that the Office failed to act on his authorization to take his entire benefits from the Office of Personnel Management of \$500.00 a month rather than \$250.00 a month. He claimed that the Office's failure to process his claim correctly had caused an overpayment in his Social Security disability payment, which he had to repay.

In a January 13, 2000 decision, the Office denied appellant's request for waiver of the interest on his overpayment. In an accompanying statement, the senior Office claims examiner stated that it was initially determined on September 25, 1996 that the period to repay the debt with interest charges was 142.57 months. She noted that there were no accrued interest charges at that time. The claims examiner stated that, as this was less than appellant's life expectancy at that time of 372 months, the interest charges could not be waived. She indicated that, as of the January 13, 2000 decision, there were accrued interest charges of \$7,560.09. The claims examiner calculated, using the monthly payment of \$500.00, the amount of time to repay the interest was 27.53 months. She stated that the amount of time to repay the debt with interest was 170.20 months. The claims examiner concluded that, as this was less than appellant's life expectancy of 307.2 months, the charges could not be waived. In a separate repayment schedule, the Office indicated that the amount of principal was \$53,666.90 and the total interest was \$30,889.37 for a total debt of \$84,556.27.

The Board finds that the Office properly determined the amount of the overpayment to be recovered from appellant should not be compromised.

The Office's procedures concerning waiver of interest and other charges provide, in relevant part, as follows:

"There are only three circumstances under which charges may be waived. Waiver is mandatory under (a) and (c) below; it is discretionary under (b).

"(a) *If the principal is repaid in full within 30 days* of notification that the charges are applicable, then charges are waived....

"(b) *If the full amount of the principal is paid after charges have accrued*, and the additional cost of recovering the charges is greater than the amount of the accrued charges, then the [Office] may, at its discretion, waive the charges.

“(c) *Where the debtor is without fault in the creation of the debt* and a repayment agreement has been established, if the monthly payment is so small that it does not cover the interest, or there is so little left after interest that the debt will not be paid off within the lifetime of the debtor as determined by actuarial tables, then charges are waived.”²

The record shows that appellant did not repay the debt within 30 days. The Office properly indicated that repayment of the debt would take 170.1 months, which was less than appellant’s life expectancy of 307.2 months. Therefore, appellant was not entitled to waiver of interest as a matter of right. The evidence of record shows that at the time the repayment schedule was established in September 1996, the amount of accrued interest was \$17,214.68. There is no evidence that the cost of recovery of this interest would have exceeded the amount of the accrued interest. There is no basis to conclude that the Office abused its discretion in refusing to waive interest on the overpayment for that reason.

Under the Office’s procedures, compromise of the principal of the overpayment can be considered if application of the interest charges would extend the period of repayment by more than 35 percent. Such a determination is made at the time the repayment schedule is established.³ In this case, the repayment schedule was developed in September 1996 and amended by the time of the January 13, 2000 decision. The Office based its decision to refuse to compromise the principal of the overpayment on the September 1996 repayment schedule. The Office acted appropriately in determining whether to compromise the amount of the overpayment based on the 1996 data. The Office originally calculated in September 1996 that repayment of the principal of \$53,666.90 would take 107.33 months and that 35 percent of that would extend the overpayment recovery period to 144.9 months. At that time the interest was calculated as \$17,214.68. It was calculated that the amount of interest would extend the overpayment recovery period to 142.57 months. As this 142.57 months was less than the extension of time which would require consideration of a compromise of the overpayment (144.9 months), the Office properly denied appellant’s request for compromise of the amount of the overpayment.

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.4 (September 1994); see *Linda D. Lane*, 46 ECAB 727 (1995).

³ *Id.*, Chapter 6.300.5(a).

The decision of the Office of Workers' Compensation Programs, dated January 13, 2000, is hereby affirmed.

Dated, Washington, DC
March 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member