

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK C. LEONE and DEPARTMENT OF THE NAVY,  
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1513; Submitted on the Record;  
Issued March 1, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant received a \$7,882.92 overpayment of compensation; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to waive recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$100.00 per month from appellant's compensation payments.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order<sup>1</sup> on April 24, 1997 in which it reversed the June 17, 1994 decision of the Office on the grounds that the Office improperly determined appellant's wage-earning capacity based on his ability to work as a security guard.<sup>2</sup> The Board found that the medical evidence did not show that appellant was physically capable of performing the security guard position around the time his compensation was adjusted in July 1989. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Due to the Board's decision, appellant retroactively received total disability compensation payments. On August 16, 1999 the Office made a preliminary determination that appellant received a \$7,882.92 overpayment of compensation. The Office indicated that the overpayment had occurred because the Office deducted the lower premium for the Mailhandlers Health Plan, during the period January 14, 1990 to June 19, 1999, despite the fact that appellant had changed from the Mailhandlers Health Plan to the U.S. Healthcare Health Plan effective

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<sup>1</sup> Docket No. 95-151.

<sup>2</sup> On February 12, 1975 appellant, then a 27-year-old rigger, sustained an incomplete rotator cuff tear and chronic subdeltoid bursitis of his left shoulder due to digging at work. Appellant stopped work for a period and later returned to work in a light-duty position. He received appropriate compensation for his various periods of disability. By decision dated July 13, 1989, the Office adjusted appellant's compensation due to his capacity to earn wages as a security guard. By decisions dated September 19, 1990, July 31, 1991, November 20, 1992 and June 17, 1994, the Office affirmed its July 13, 1989 decision.

January 14, 1990. The Office also made a preliminary determination that appellant was not at fault in the creation of the overpayment and requested that he submit financial information to be used in determining the issue of waiver of the overpayment.

By decision dated March 20, 2000, the Office finalized its preliminary determination that appellant had received a \$7,882.92 overpayment. The Office further stated, "After carefully studying your case and fully considering any additional evidence or arguments submitted, we have decided not to waive the overpayment. The reasons for this decision are explained in the enclosed memorandum."<sup>3</sup> The Office determined that the overpayment should be recovered by deducting \$100.00 per month from appellant's compensation payments.<sup>4</sup>

The Board finds that the case is not in posture for decision.

In making determinations regarding a claimant's entitlement to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>5</sup> Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."<sup>6</sup> These requirements are supported by Board precedent.<sup>7</sup>

In its March 20, 2000 decision, the Office did not provide adequate finding of facts and reasoning to support its determination that appellant had received a \$7,882.92 overpayment of compensation which was not subject to waiver. In its August 16, 1999 preliminary overpayment determination, the Office had indicated that appellant was not at fault in the creation of the overpayment. In its March 20, 2000 decision, the Office did not specify whether it had finalized its preliminary determination that appellant was not at fault or whether it had determined that appellant was at fault. Moreover, it remains unclear upon what basis the Office determined that the overpayment was not subject to waiver and on what basis the deduction of \$100.00 per month to recover the overpayment was justified. The Office indicated that it was enclosing a memorandum to explain its reasoning, but the record does not contain the memorandum to which the Office referred.<sup>8</sup>

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<sup>3</sup> The record does not contain the memorandum to which the Office referred.

<sup>4</sup> On March 20, 2000 the Office also issued a notice of proposed termination of compensation. However, the record does not contain a final decision concerning this proposed termination of compensation. Therefore, the matter is not currently before the Board; *see* 20 C.F.R. § 501.2(c).

<sup>5</sup> 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

<sup>6</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>7</sup> *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

<sup>8</sup> Moreover, the Federal (FECA) Procedure Manual contains provisions regarding the form and content of final overpayment decision; *see* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4 (July 1997).

Therefore, the case shall be remanded to the Office for the issuance of a final overpayment decision which contains adequate findings of facts and reasoning in support of its determinations. Prior to the issuance of this decision, the Office should engage in any development it deems necessary.

The March 20, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
March 1, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member