

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALTON VANN and U.S. POSTAL SERVICE,
CITY POST OFFICE, Washington, DC

*Docket No. 01-1359; Submitted on the Record;
Issued May 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined to withhold \$100.00 a month from appellant's continuing compensation for recovery of an overpayment in compensation.

The case has been on appeal twice previously.¹ In a December 31, 1996 decision, the Board found that appellant had failed to report self-employment while receiving temporary total disability compensation from the Office and therefore forfeited compensation for the periods covered by CA-1032 forms for reporting employment. The Board remanded the case for a determination of the periods covered by CA-1032 forms for which appellant forfeited compensation. The Board affirmed the Office's determination that appellant was at fault in the creation of the overpayment. The Board, however, remanded the case for a determination of the amount to be withheld from appellant's continuing compensation payments, as appellant had submitted evidence to the Office that his expenses were higher than previously reported. In a January 13, 2000 decision, the Board noted that appellant had submitted additional evidence showing a decrease in family income due to a decrease in Social Security benefits and increase in several items of expenses. The Office had required appellant to submit documentation to show his entire financial status. The Board found that the Office had improperly rejected appellant's request for modification on the sole grounds that appellant must submit documentation of all his expenses and income. The Board stated that once appellant had submitted new, relevant evidence to show increased expenses or decreased income, the Office had the responsibility to review appellant's entire financial status to determine whether it was withholding the proper amount from his continuing compensation.

On remand, the Office requested additional financial information from appellant, which he submitted. In a June 5, 2000 decision, the Office denied appellant's request for modification

¹ Docket No. 98-417 (issued January 12, 2000); Docket No. 96-158 (issued December 31, 1996). The history of the case is contained in the prior decision and is incorporated by reference.

of the Office's prior decision. In an accompanying memorandum, a senior Office claims examiner noted that, in a June 18, 1997 decision, the Office had found that appellant's totally monthly household income was \$3,175.70 and totally monthly household expenses were \$3,011.44. He noted that appellant's debt had been compromised to \$41,318.95 with the recovery amount set at \$151.71 every 28 days. He indicated that appellant had submitted evidence that his monthly income had been reduced by \$515.00 in July 1996 when the Social Security benefits of appellant's daughter were permanently terminated. He related that appellant submitted numerous credit card statements for periods in 1996 and 1997 which showed average monthly payments of \$212.76 for three credit cards. Appellant also showed monthly medical expenses of \$128.67 in 1997. He paid an average of \$5.50 a month for membership in the American Automotive Association. Appellant submitted evidence from his insurance company showing that he had additional expenses of \$82.00 a month for his car insurance. The claims examiner indicated that he did not consider the expenses of a drinking water service and the college expenses of appellant's daughter to be ordinary and necessary living expenses. He stated that the subtraction from income and additions to expenses showed appellant had a monthly income of \$2,660.75 and monthly expenses of \$3,441.37. The claims examiner noted that appellant had an excess of \$780.62 of expenses over income. He commented that appellant was able to assume additional debt to cover expenses that the Office found not to be ordinary and necessary living expenses and the attorney fee costs not covered under the Federal Employees' Compensation Act. The claims examiner concluded that the documentation submitted by appellant was unreliable and insufficient in that a reasonable person would conclude that the expenses and income reported by appellant did not accurately reflect his household financial picture. He stated that the documentation could not be used in rendering an appropriate determination with regard to whether there was a basis for the Office to modify or vacate its prior decision. The claims examiner declared that the Office would resume recovery at \$457.98 every 28 days and would have \$59,064.37, which had been subtracted due to a compromise of the overpayment, added back into the debt principal.

In a June 12, 2000 letter, appellant requested reconsideration. He contended that the Office's decision was arbitrary and capricious. Appellant stated that he had \$1,663.78 a month in ordinary and necessary living expenses, excluding food and clothes, and paid \$1,195.00 a month in credit card payments. He noted that his credit debt was \$57,565.00. Appellant commented that he had been using credit cards to pay for his living expenses as his income was insufficient to meet those expenses.

The Office again requested financial information from appellant. In an August 6, 2000 letter, appellant indicated that he had approximately \$73.00 in checking and savings accounts. He reported that his wife was receiving \$1,149.00 a month in Social Security disability benefits. Appellant repeated his description of his monthly expenses of \$1,663.78, including his mortgage, student loans, utilities, telephone service and cable television service. He commented that food, clothing and other personal expenses were included in the Office's allowances as those expenses were being paid by checks from one credit card and by use of another credit card. Appellant also repeated his accounting of his credit card debt and monthly payments on the debt.

In a September 6, 2000 decision, the Office modified its June 5, 2000 decision. In an accompanying memorandum, a senior Office claims examiner noted that appellant had \$2,639.85 in monthly income, including his temporary total disability compensation benefits. The claims

examiner used appellant's August 6, 2000 letter to calculate that appellant had \$2,858.78 in monthly expenses and therefore had a monthly deficit of \$218.93. He stated that since appellant forfeited compensation, no provision for waiver of recovery of the overpayment could be considered. The claims examiner commented, however, that the amount to be deducted from his continuing compensation pay in recovery of the overpayment had to be considered. He stated that, in consideration of appellant's current financial situation, it would not be feasible to continue to collect \$457.95 every 28 days. The claims examiner indicated that if appellant's current debt deduction were reduced to \$100.00, he would have approximately \$139.02 in additional income. He concluded that, taking into consideration the cause of the debt, the need to minimize financial hardship on appellant, but also the need to collect as much of the overpayment as possible, a repayment schedule of \$100.00 every 28 days was reasonable. The claims examiner also computed a compromise of appellant's overpayment amount, reducing it from \$91,383.90 to \$38,148.13.

In a September 15, 2000 letter, appellant contended that the amount in his checking and savings account should not be included in the calculation of his monthly income, reducing that amount to \$2,566.85. He also indicated that some additional expenses were not included in his statement, such as \$42.00 for a safety deposit box and \$10.00 a month for maintenance of his checking account. Appellant also noted that expenses for food and clothing were not included in the calculations. In a September 16, 2000 letter, he amended his letter to be a request for reconsideration. In an October 18, 2000 decision, the Office denied appellant's request for modification. In an accompanying memorandum, a senior claims examiner indicated that the additional items of expenses were irrelevant as appellant had already been found to have a negative income which had resulted in the compromise of the amount of the overpayment and the writing off of interest on the debt. The claims examiner also noted that appellant had indicated that he was using credit card checks to pay for food and clothing so that such expenses had already been included in his description of his credit card debt. The claims examiner stated, therefore, that there was no reason to reevaluate appellant's monthly expenditures as the expenditures in the August 6, 2000 letter were taken into consideration in the September 6, 2000 decision.

In a November 15, 2000 letter, appellant again requested reconsideration. He indicated that the Office had incorrectly computed his expenses. Appellant noted that the Office, in the December 22, 1994 decision, had concluded that he had \$404.95 in monthly food costs. He commented that the Office has determined that he had \$132.00 in clothing costs and, in its June 5, 2000 decision, found that he had \$128.67 in monthly medical costs. Appellant stated that he therefore had \$665.62 in additional monthly expenses. In a March 30, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and cumulative and therefore insufficient to warrant review of the prior decision.

The Board finds that the Office properly determined that \$100.00 should be withheld from appellant's continuing compensation checks to recover the overpayment.

As the Office properly noted, appellant is not entitled to waiver of recovery of the overpayment because he was found to have been at fault in the creation of the overpayment.²

² *Edwin C. Whitlock*, 50 ECAB 384 (1999).

Recovery of overpayments from continuing compensation is governed by section 10.441(a) of the applicable regulations, which states:

“When an overpayment has been made to an individual who is entitled to further [compensation] 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 the 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 to minimize any hardship.”³

The Office is therefore vested with discretionary authority in determining the amount to recover from continuing compensation payments so long as it takes into account the factors cited in the Office’s regulations. In this case, the Office took into account appellant’s expenses and income. The Office noted in the September 6, 2000 decision that appellant’s expenses exceeded his income and therefore compromised the overpayment amount, waived recovery of interest on the overpayment, and reduced the amount to be recovered from the continuing compensation payments to \$100.00 every 28 days. The additional evidence submitted by appellant made only marginal adjustments in the determination that his expenses exceeded his income. The Office did not include any separate determination of appellant’s food and clothing costs because appellant indicated that he was using credit to pay these expenses, thereby increasing his reported credit card debt. Inclusion of the food and clothing expenses separately would result in a double counting of some of appellant’s expenses. The Office considered the extent of future payments of compensation by compromising the amount of the overpayment. The Office also considered the rate of compensation in using that amount to calculate appellant’s income and in reducing the amount to be deducted from appellant’s continuing compensation. The Office therefore took into consideration all the relevant factors set forth in the regulation in determining the amount to be withheld from his compensation payments. As the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁴ Appellant has not submitted any evidence to show that the Office abused its discretion in determining that \$100.00 should be withheld from each of his continuing compensation checks.

³ 20 C.F.R. § 10.441(a).

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated March 30, 2001 and October 18 and September 6, 2000 are hereby affirmed.

Dated, Washington, DC
May 24, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member