

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER HIERONYMUS and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Mobile, AL

*Docket No. 02-103; Submitted on the Record;
Issued May 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$1,668.64 was created; and (2) whether the Office properly denied waiver of the overpayment.

The Office accepted that appellant sustained a right elbow fracture, multiple contusions, cervical/lumbar strains, closed head injury, postconcussion syndrome, fractured teeth, deranged right knee, right ankle strain and right second metatarsal stress fracture in the performance of duty on December 18, 1993.

By letter dated March 27, 1999, the Office notified appellant of a preliminary determination of overpayment totaling \$1,668.64. The Office explained that during the period of September 30, 1996 to January 3, 1998, the Office incorrectly deducted health benefits premiums for single coverage, although appellant had family coverage during that period. According to the Office, it had deducted \$739.02 in health benefit premiums during this period, but should have deducted \$2,407.66, thereby creating a \$1,668.64 overpayment. With respect to fault, the Office found that appellant was not at fault; an overpayment recovery questionnaire (Form OWCP-20) was enclosed and appellant was advised to submit supporting financial information.

In a decision dated August 2, 2001, the Office finalized its determination of a \$1,668.64 overpayment. The Office also denied waiver of the overpayment.

The Board finds that the Office properly found that an overpayment of \$1,668.64 was created.

The record indicates that appellant was married on September 7, 1996 and she selected health benefits coverage under enrollment code NL2, for family coverage; the effective date of the action was September 29, 1996. The compensation payments through January 3, 1998 withheld health benefit premiums for enrollment code NL1, single coverage and, therefore, an overpayment of compensation was created. The Office determined that, during the period of

September 30, 1996 to January 3, 1998, \$2,407.66 should have been withheld from appellant's compensation. Since only \$739.02 had been withheld, an overpayment of \$1,668.64 was created.

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

Section 8129(b) of the Federal Employees' Compensation Act¹ provides: "[a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience."² Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses" and also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.³ For waiver under the "defeat the purpose of the Act" standard, appellant must show that she needs substantially all of her current income to meet current ordinary and necessary living expenses and that her assets do not exceed the resource base.⁴

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; or (b) the 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.

The Office notified appellant by letter dated March 29, 1999 of its preliminary overpayment determination and the need to submit financial information to determine entitlement to waiver of the overpayment. On appeal, appellant indicates that she does not recall receiving the March 29, 1999 letter. It was, however, sent to her address of record. The Board has held that in the absence of evidence to the contrary, it is presumed that a notice mailed to an

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8129(b).

³ Office procedures provide that the assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or dependent plus \$600.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6 (September 1994).

⁴ See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

addressee in the ordinary course of business was received by the addressee.⁵ Appellant did not submit any financial information regarding waiver of the overpayment.⁶

With respect to the submission of financial evidence, the Office's regulations provide in pertinent part:

“(a) 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 of the overpayment would defeat the purpose of the [Act] or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”⁷

As appellant did not submit any financial information, the Board finds that the Office properly denied waiver of the overpayment in this case.

⁵ See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

⁶ The Board cannot consider evidence that was not before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁷ 20 C.F.R. § 10.438.

The decision of the Office of Workers' Compensation Programs dated August 2, 2001 is affirmed.

Dated, Washington, DC
May 22, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member