

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY SCHECHTEL and PEACE CORPS,
Washington, DC

*Docket No. 01-2053; Submitted on the Record;
Issued February 3, 2003*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received a \$2,115.07 overpayment in compensation; and (2) whether the Office properly denied waiver of the overpayment.

On October 14, 1989 appellant, then a 33-year-old former Peace Corps volunteer in Paraguay, filed an occupational disease claim alleging that, while working as a forestry extension volunteer, a position that involved heavy manual labor, he sustained a herniated cervical disc at C7, extreme pain radiating down his left arm, numbness in the last two fingers of his left hand, and loss of strength in the left arm. Appellant's close-of-service date for the Peace Corps was November 10, 1986. By letter dated February 15, 1990, the Office accepted appellant's claim for herniated disc C7-T1, left side. Appellant underwent surgery on March 20, 1990, which the Office also accepted as employment related.

On April 14, 1997 appellant filed a notice of recurrence of disability, claiming that he had a recurrence of pain down his left arm in March 1996 for which he had surgery on September 26, 1996. By letter dated May 14, 1998, the claim was accepted for degenerative changes of the C5-6 disc and fusion surgery of September 26, 1996.

On September 24, 1998 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) claiming wage loss from September 6 to December 19, 1996.

The Office issued appellant compensation in the amount of \$5,934.54. The Office noted that this was based on his pay rate on the private job he held subsequent to his work with the Peace Corps. By letter dated August 4, 1999, the Office noted that this award was based on earnings of \$532.59 per week, representing his pay rate in private industry on September 26, 1996, the date he underwent surgery.

By preliminary determination dated January 11, 2000, the Office informed appellant that he had received an overpayment in the amount of \$2,115.07 and that he was without fault in creating the overpayment. The Office informed appellant of the steps he could take to request a waiver of the overpayment, including the submission of specified financial information. Appellant requested a formal decision.

In a January 14, 2000 decision, the Office noted that appellant was not a “head of household” during his Peace Corps service, but instead identified as a “volunteer.” His compensation rate was therefore based on the minimum rate for a GS-7 salary. The Office noted that the salary for a GS-7 Step 1 on November 10, 1986, the date he was separated from the Peace Corps, was \$17,824.00 per annum or \$342.77 per week. The Office noted that his compensable disability began on September 6, 1996 and ended upon return to work and pay status on December 19, 1996.

On January 18, 2000 appellant requested a waiver of his overpayment and a prerecoupment hearing. A hearing was held on August 22, 2000. In a decision dated April 25, 2001, the hearing representative found that the Office correctly determined that appellant had been overpaid \$2,115.07 as appellant should have been paid compensation as a GS-7 Step 1 as of November 10, 1996. Appellant was without fault in the creation of the overpayment but the Office hearing representative determined that the amount should not be waived as appellant had not submitted requested financial information.

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$2,115.07.

Pursuant to section 8142(c)(1) of the Act¹ and the implementing regulation,² the pay rate of Peace Corps volunteers is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. A volunteer who is not a leader and does not have minor children at the time of service is deemed as having a monthly pay rate at a minimum rate for a GS-7. The Board has determined that section 8142 is the exclusive method of computing the compensation pay rate for Peace Corps volunteers.³ Section 8101(4) of the Act,⁴ which provides that the pay rate may be based on pay at date of injury, date of recurrence or date of disability, does not apply to Peace Corps volunteers.⁵

In the instant case, the Office initially based appellant’s rate of pay on compensation by a private employer at the time that he sustained the disability on September 6, 1996, and issued appellant a check for \$5,934.54. However, due to the statutory provisions pertaining to Peace Corps volunteers, he should have been paid based on the rate of pay for a GS-7 Step 1 at the time

¹ 5 U.S.C. § 8142(c)(1).

² 20 C.F.R. § 10.731.

³ *Michael Pachovas*, 38 ECAB 191 (1986).

⁴ 5 U.S.C. § 8101(4).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Special Act Cases*, Chapter 2.1700.4(h) (November 1993).

he separated from the Peace Corps on November 10, 1986, \$17,824.00 annually or \$342.77 a week. The Office found that appellant was entitled to compensation from September 6 to December 18, 1996 in the amount of \$3,819.67. The Office then subtracted this figure from the amount that appellant was erroneously paid, and found that appellant had been overpaid in the amount of \$2,115.07. The Office's calculation of overpayment was proper. Appellant was erroneously paid at a higher rate based on his rate of pay in private employment at the time of disability, whereas he should have been paid based on the GS-7 Step 1 pay rate. For these reasons, the Board finds that the Office's determination that appellant received an overpayment in the amount of \$2,115.07 was proper.⁶

The Board further finds that the Office acted within its discretion in denying waiver of overpayment.

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.⁷ These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states:

“Adjustment 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.”⁸

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 recovery would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.436 of the implementing regulations⁹ 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 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.¹⁰ An individual is deemed to need substantially all of his or her income to meet

⁶ The Board notes that the Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. *Noe L. Flores*, 49 ECAB 344, 346 n.1 (1998). Following the filing of the appeal with the Board, on July 12, 2001, the Office did not retain jurisdiction to render a further decision regarding a case on September 17, 2001. The decision is null and void.

⁷ *Frederick Arters*, 53 ECAB ____ (Docket No. 01-1237, issued February 27, 2002).

⁸ 5 U.S.C. § 8129(b).

⁹ 20 C.F.R. § 10.436 (1999).

¹⁰ An individual's assets must exceed a resource based 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).

current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹¹

Pursuant to section 10.438 of the regulations, “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 the Act, or be against equity and good conscience.”¹² Failure to submit the requested information shall result in the denial of waiver.¹³

Appellant did not submit the requested financial information to the Office. Therefore, under the implementing regulations, waiver is denied, as there is no evidence submitted as to his financial status allowing the Office to determine whether recovery should be waived. The Board finds that the Office properly denied waiver of recovery of the overpayment.

The decision of the Office of Workers’ Compensation Programs dated April 25, 2001 is hereby affirmed.

Dated, Washington, DC
February 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹¹ See *Demitri J. Fasi*, 49 ECAB 278 (1998); *Leticia C. Taylor*, 47 ECAB 198 (1995).

¹² 20 C.F.R. § 10.438(a).

¹³ 20 C.F.R. § 10.438(b).