

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL E. WHITE and DEPARTMENT OF THE NAVY,  
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 01-1274; Submitted on the Record;  
Issued June 27, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of \$12,694.14 was created; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly found that the overpayment should be repaid by deducting \$100.00 every four weeks from continuing compensation.

The Office accepted that appellant sustained a right knee contusion and right knee meniscus tear in the performance of duty on July 17, 1991. In a letter dated May 5, 2000, the Office notified appellant that it had made a preliminary determination that an overpayment of compensation totaling \$12,694.14 had occurred. The Office indicated that, during the period July 1, 1994 to April 22, 2000, health benefit premiums of \$8,683.28 had been deducted. Based on appellant's selected health benefit plan as of July 1, 1994, however, \$21,377.42 should have been deducted. The Office advised appellant that it found him not to be at fault in creating the overpayment.

By decision dated June 9, 2000, the Office finalized its determination that a \$12,694.14 overpayment had occurred. The Office found that appellant was not entitled to waiver of the overpayment, and that the overpayment would be collected by deducting \$100.00 every four weeks from appellant's continuing compensation. It was noted that because of appellant's financial situation, the amount of the overpayment was compromised and interest would not be assessed.<sup>1</sup>

The Board finds that the Office properly found that an overpayment of \$12,694.14 was created.

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<sup>1</sup> The actual amount collected would be \$12,531.29.

The record indicates that the employing establishment terminated appellant's employment effective July 1, 1994, and health benefit premiums were no longer deducted. There is no indication, however, that appellant formally cancelled his health benefit enrollment.<sup>2</sup> The Board has held that under such circumstances, when appellant pursues compensation benefits and is found to be entitled to compensation as of the date his employment ceased, the Office must deduct health benefit premiums.<sup>3</sup> For the period July 1, 1994 to April 22, 2000, the Office withheld \$8,683.28 in health benefit premiums. The Office determined, however, that premiums for enrollment code 102 under the Federal Employees' Health Benefits (FEHB) plan should have been \$21,377.42 for that period. Accordingly, a \$12,694.14 overpayment was created.

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

Section 8129(b) of the Federal Employees' Compensation Act<sup>4</sup> provides: "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."<sup>5</sup> 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.<sup>6</sup> For waiver under the "defeat the purpose of the Act" standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.<sup>7</sup>

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<sup>2</sup> Under 5 C.F.R. § 890.101(a), cancellation means that act of filing a health benefits registration form terminating enrollment in a health benefits plan and electing not to be enrolled for the future.

<sup>3</sup> See *Leticia C. Taylor*, 47 ECAB 198 (1995). Health benefit deductions from compensation payments must be retroactive to the date deductions ceased under the Office of Personnel Management policy. See *John E. Rowland*, 39 ECAB 1377 (1988).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8129(b).

<sup>6</sup> 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 (September 1994).

<sup>7</sup> See *Robert E. Wenholz*, 38 ECAB 311 (1986).

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; (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.

Appellant completed an overpayment recovery questionnaire (OWCP-20) dated May 11, 2000. He reported the value of stocks, bonds and mutual funds as \$51,000.00. Since these assets exceed the resource base, recovery of the overpayment would not defeat the purpose of the Act or be against equity or good conscience. The Office therefore properly denied waiver of the overpayment.

The Board further finds that the Office properly determined that the overpayment should be repaid by deducting \$100.00 every four weeks from continuing compensation.

Section 10.441 of the Office's regulations provides:

“Whenever an overpayment has been made to an individual who is entitled to further 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 hardship.”<sup>8</sup>

In this case, the Office noted that appellant's stated expenses exceeded income, and attempted to limit the financial hardship by deducting \$100.00 per compensation payment and compromising a portion of the overpayment. The Board finds that the Office did consider the relevant factors under section 10.441 in determining the rate of recovery in this case.

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<sup>8</sup> 20 C.F.R. § 10.321.

The decision of the Office of Workers' Compensation Programs dated June 9, 2000 is affirmed.

Dated, Washington, DC  
June 27, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member