

In a letter dated October 16, 2003, the Office notified appellant of its preliminary determination that he had received a \$1,135.80 overpayment because basic life premiums were not deducted from his compensation payments from July 4, 1990 through July 12, 2003. Additionally, the Office stated that it had made a preliminary finding that appellant was without fault in creating the overpayment and could request a waiver. Stating that it was providing him with an overpayment recovery questionnaire, the Office informed appellant that he should submit documents, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips and other records to support income and expenses shown on the questionnaire. The Office explained:

“This information will help us decide whether or not to waive the overpayment. If waiver is not granted, the information will be used to decide how to collect the overpayment. We will not try to collect the overpayment until we reach a final decision on your request for waiver.”

“Also please note that, under 20 C.F.R. § 10.438, we will deny waiver if you fail to furnish the information requested on the enclosed Form OWCP-20 (or other information we need to address a request for waiver) within 30 days. We will not consider any further request for waiver until the requested information is furnished.”

On October 22, 2003 appellant requested waiver. He acknowledged that he was not entitled to the overpayment, however, asserted that it would cause hardship to repay. Appellant outlined his income and expenses on the questionnaire, although he submitted no additional documentation to support his monthly expenses. On the questionnaire he listed \$1,100.40 as monthly income. Appellant reported that his wife worked part-time; however, he did not include her income on the questionnaire. He then reported \$1,792.00 in total monthly expenses; \$450.00 for rent, \$400.00 for food, \$100.00 for clothing, \$400.00 for utilities, \$225.00 in consumer debt and \$217.00 for automobile insurance. Appellant reported that he owned no valuable property or real estate and that he had \$240.00 in his checking account, \$0.00 in his savings account and \$500.00 cash on hand.

On November 28, 2003 the Office finalized the overpayment determination and found that appellant was not entitled to waiver of recovery of the overpayment and that the total debt of \$1,135.80 was due to the Office within 30 days.

LEGAL PRECEDENT

Section 8129(a) of the Federal Employees' Compensation Act¹ provides that, where an overpayment of compensation has been made “because of an error of fact or law,” adjustments shall be made by decreasing later payments to which an individual is entitled.² The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “[a]djustments or recovery by the United States may not be made when incorrect

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8129(a).

payments 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.”³

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.⁴ The Office must exercise its discretion to determine whether recovery of the overpayment would “defeat the purpose of the Act or would be against equity and good conscience,” pursuant to the guidelines provided in sections 10.434-437 of the implementing federal regulation.⁵

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.⁶

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, 20 C.F.R. § 10.436 provides as follows:

“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 or her current income (including compensation benefits) to meet current 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. A higher amount is specified for a beneficiary with one or more dependents.”⁷

With regard to the “against equity and good conscience” standard, section 10.437 of the regulation provides:

“(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

³ 5 U.S.C. § 8129(b).

⁴ *James Lloyd Otte*, 48 ECAB 334, 338 (1997); *see William J. Murphy*, 40 ECAB 569, 571 (1989).

⁵ 20 C.F.R. §§ 10.434-437 (1999).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ 20 C.F.R. § 10.436.

“(b) Recovery of an overpayment is also considered to be against equity and good conscience when any 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. In making such a decision, [the Office] does not consider the individual’s current ability to repay the overpayment.”⁸

ANALYSIS

The record in the instant case does not support a finding that recovery of the overpayment would either defeat the purpose of the Act or be against equity and good conscience. The Office advised appellant that, if he wanted to request waiver he had to provide the necessary financial information by completing the overpayment recovery questionnaire issued on October 16, 2003. On October 22, 2003 he submitted an overpayment recovery questionnaire noting total monthly expenses of \$1,792.00 and his monthly income from workers’ compensation being \$1,100.40. However, appellant failed to provide any supporting data to substantiate his expenses. Moreover he indicated on the questionnaire that his wife works part time, although he did not specify her income as requested along with his monthly compensation. As a result, the Office did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of the Act. Furthermore, the evidence of record does not demonstrate that appellant would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the overpayment. As he has not shown that recovery of the overpayment would “defeat the purpose of the Act” or would “be against equity and good conscience,” the Board finds that the Office properly denied waiver of recovery of the overpayment.

CONCLUSION

The Board finds in this case, that the Office properly denied waiver of recovery of the overpayment.

⁸ 20 C.F.R. § 10.437.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2003 is affirmed.

Issued: May 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member