

**United States Department of Labor
Employees' Compensation Appeals Board**

YOUNG BONG CHA, Appellant

and

**U.S. POSTAL SERVICE, COLLEGE PARK
POST OFFICE, Atlanta, GA Employer**

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**Docket No. 04-528
Issued: May 25, 2004**

Appearances:
Young Bong Cha, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 18, 2003 appellant filed an appeal of the Office of Workers' Compensation Programs' September 15, 2003 overpayment decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment and waiver issues adjudicated by the September 15, 2003 decision.

ISSUES

The issues are: (1) whether the Office properly found that an overpayment of \$1,405.57 occurred as appellant received compensation for temporary total disability while working full time from November 14 through December 1, 2001; and (2) whether the Office properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

The Office accepted that on October 1, 1990 appellant, then a 36-year-old letter carrier, sustained bilateral knee sprains with internal derangement requiring bilateral arthroscopies. On November 14, 2001 appellant returned to full-time light duty as a modified clerk with no wage

loss. The Office issued a check on December 1, 2001 in the amount of \$2,186.46 for the period November 4 to December 1, 2001.¹

By notice dated May 13, 2002, the Office advised appellant of its preliminary determination that a \$1,405.57 overpayment of compensation had occurred as he received compensation for temporary total disability from November 14 to December 1, 2001, while working full time with no wage loss.² The Office further found that appellant was without fault in the creation of the overpayment, as the Office did not advise him how compensation would be paid or instruct him to return payments received after he returned to work. The Office afforded appellant the opportunity to submit evidence and argument regarding these preliminary findings and to request a telephone conference or prerecoument hearing.

On July 23, 2002 appellant agreed to send the Office a check for the full amount of the \$1,405.57 overpayment. However, appellant subsequently submitted information regarding his income, assets and expenses. The record also indicated that the Office issued a final overpayment decision on October 7, 2002. Appellant filed an appeal with the Board on January 16, 2003. However, appellant's financial documents and the October 7, 2002 decision were not associated with the case record the Office provided to the Board. On May 30, 2003 the Board issued an order remanding the case for reconstruction of the case record.³

On remand, the Office associated appellant's financial information and the October 7, 2002 decision with the case record. In an August 7, 2002 overpayment recovery questionnaire, appellant listed a wife and two minor children as dependents. He listed monthly expenses of \$262.33 in rent or mortgage, \$700.00 for food, \$150.00 for clothing, \$272.22 for utilities and \$5,404.20 for a combination of homeowner's association fees, college tuition and textbooks for his 18-year-old son and 21-year-old daughter. He also listed assets totaling \$8,298.68.⁴ Federal income tax forms for 2001, showed wages of \$48,564.44.

By decision dated September 15, 2003, the Office found a \$1,405.57 overpayment of compensation as appellant received total disability compensation while working with no wage loss from November 14 to December 1, 2001. The Office denied waiver of recovery.

¹ The Office issued appellant a December 29, 2001 check for \$2,186.46 for the period December 2 to 29, 2001. Appellant returned this check to the employing establishment.

² In an April 24, 2002 worksheet, the Office calculated that appellant received \$1,501.02 in compensation for the period November 14 to December 1, 2001, with deductions of \$58.58 for health benefits, \$28.29 in miscellaneous insurance and \$8.58 for life insurance, resulting in net compensation of \$1,405.57.

³ Docket No. 03-620.

⁴ Appellant listed assets of \$200.00 cash, \$1,735.23 in a checking account, \$4,363.45 in a savings account, \$2,000.00 stocks and bonds, totaling \$8,298.68 Appellant submitted bills and receipts documenting his assets and expenses.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides that the United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁵ When an employee returns to work and ceases to have any loss of wages, compensation for wage loss is no longer payable.⁶ Thus, wage-loss compensation paid during a period when the employee is working with no wage loss constitutes an overpayment.⁷

ANALYSIS -- ISSUE 1

Appellant returned to full-time light duty with no wage loss on November 14, 2001. However, the Office issued appellant a check for \$2,186.46 for the period November 4 to December 1, 2001, of which \$1,405.57 covered the period November 14 to December 1, 2001. Thus, appellant received \$1,405.57 in compensation from November 14 to December 1, 2001, while working full time with no wage loss. The Board, therefore, finds that the \$1,405.57 constitutes an overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made is not at fault in accepting or creating the overpayment.⁸ If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁹ Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.¹⁰ 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 guidelines provided in section 10.434 to 437 of the implementing federal regulation.

Section 10.436 of the Act's implementing regulation¹¹ provides that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship to a

⁵ 5 U.S.C. § 8102(a).

⁶ *Kenneth E. Rush*, 51 ECAB 116 (1999) (the Board held that wage-loss compensation payments issued by the Office following the employee's return to full-time work with no wage loss constituted an overpayment of compensation).

⁷ *Id.*

⁸ 20 C.F.R. § 10.433(a) (1999).

⁹ 20 C.F.R. § 10.434 (1999).

¹⁰ *James Lloyd Otte*, 48 ECAB 334 (1997); *see William J. Murphy*, 40 ECAB 569 (1989).

¹¹ 20 C.F.R. § 10.436 (1999).

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. An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹² Further, an individual's assets may not exceed a resource base 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.¹³ Section 10.437¹⁴ states that recovery of an overpayment is also considered to be against good conscience if 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 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 an 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.¹⁵

ANALYSIS -- ISSUE 2

The Office found that appellant was not at fault in the creation of the overpayment and, therefore, considered waiver. Appellant submitted financial information indicating that he had \$8,298.68 in assets. This exceeds the maximum allowable family resource base of \$6,200.00 for a claimant with a spouse and two dependent children. Thus, as appellant's assets exceed the allowable resource base, he has not demonstrated that recovery of the overpayment would cause financial hardship.¹⁶ Appellant has not demonstrated that recovery of the overpayment would defeat the purpose of the Act as is required for waiver.¹⁷ With respect to whether recovery would be against equity and good conscience, appellant does not allege and the evidence does not support that he relinquished a valuable right or changed his position for the worse in reliance on his compensation payments. Accordingly, the Office properly found that recovery would not defeat the purpose of the Act or be against equity and good conscience.¹⁸

¹² *Frederick Arters*, 53 ECAB __ (Docket No. 01-1237, issued February 27, 2002); see *Howard R. Nahikian*, 53 ECAB __ (Docket No. 01-138, issued March 4, 2002).

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.437 (1999).

¹⁵ 20 C.F.R. § 10.438(a) (1999).

¹⁶ 20 C.F.R. § 10.436 (1999).

¹⁷ *Frederick Arters*, *supra* note 12.

¹⁸ 20 C.F.R. § 10.437 (1999).

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,405.57 as he received compensation for total disability while working with no wage loss from November 14 to December 1, 2001. The Board further finds that the Office properly denied waiver of recovery of the overpayment.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2003 is hereby affirmed.

Issued: May 25, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁹ The Board notes that it does not have jurisdiction over the method of recovery of the overpayment in this case. The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. *Lorenzo Rodriguez*, 51 ECAB 295 (2000).