



and landed on the concrete floor while in the performance of duty. The Office accepted appellant's claim for multiple fractures and contusions, bilateral shoulder strains and a cervical strain. Appellant received appropriate compensation for all periods of disability. He returned to work on March 13, 1995 as a full-time administrative clerk and his compensation was reduced to reflect his actual earnings. The Office subsequently accepted the condition of a consequential post-traumatic stress disorder and total disability effective June 23, 1997.

The Office periodically requested that appellant submit a Form EN1032 confirming that he had not returned to work and that he continued to have dependents for augmented compensation purposes. Appellant indicated annually on the forms that his son qualified as a dependent and that his date of birth was September 25, 1972. The forms advised that dependents could be a "husband, wife or dependent child who does not live with you if a court has ordered you to pay support to that person." In addition, the form indicated that compensation could be claimed for an "unmarried child under 18 or ... an unmarried child between 18 and 23 who is a full-time student even if that person does not live with you, as long as you make regular direct payments for his or her support." Appellant reported his dependency status on all forms, with the exception of the ones completed on March 20, 1993 and April 6, 2003. The record reflects that appellant's son was enrolled full time at Valencia College from August 28, 1991 to June 19, 1992.

In a May 28, 2003 letter, the Office notified appellant that it wished to conduct a conference concerning his entitlement to augmented compensation. Information was requested concerning appellant's divorce and when his son, N'Gia T. Timmons, became his claimed dependent. On July 14, 2003 a telephone conference took place in which appellant stated that he was separated from his wife when he was injured and had never claimed her as a dependent. He confirmed that his son was born September 25, 1972 and was his dependent. Appellant indicated that his son was not mentally disabled but was pursuing a master's degree. The Office explained that appellant was only entitled to compensation at the augmented rate for periods of time that he had a qualified dependent. It was noted that appellant's son would qualify as a dependent until the age of 18 or, beyond the age of 18, only for periods he was enrolled as a full-time student. He was asked to provide factual information pertaining to his son's enrollment.

On August 15, 2003 the Office received copies of appellant's son's school enrollment, beyond the age of 18, at Florida A&M University for the period August 1993 through May 2002.

On December 24, 2003 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$19,520.82 for the period June 20, 1992 through May 17, 2003 as appellant had received compensation at the augmented rate for periods of time he did not have a qualified dependent, because his son was either not enrolled in school on a full-time basis or was over the age of 23. The Office found that, as appellant had accurately reported his dependency status on all CA-1032 forms, with the exception of the ones completed on March 20, 1993 and April 6, 2003, it could not be determined that he was at fault in the creation of the overpayment as the Office did not take the proper action to reduce appellant's benefits when he did report the correct dependency status. The Office informed appellant that, if he disagreed with the decision, he could submit evidence or arguments to the Office or request a precoupment hearing within 30 days. The Office further asked for a detailed explanation of his reasons for seeking waiver, to fully complete and submit the enclosed overpayment recovery

questionnaire and attach any supporting documents in his possession. The Office requested that appellant submit any relevant financial documents, including income tax returns, bank account statements, bills and cancelled checks reflecting payments, pay slips and other records to support income and expenses listed on the enclosed questionnaire. The Office also noted that, pursuant to 20 C.F.R. § 10.438,<sup>1</sup> failure to furnish the financial information requested on the questionnaire within 30 days would result in a denial of waiver of the overpayment and that no further request for waiver would be considered until the requested information was furnished.

In a handwritten note dated January 22, 2004, attached to an incomplete Form OWCP-20, appellant stated that, “as per line 3 of Form OWCP-20, ‘persons are not required to respond to this collection of information unless it displays a currently valid OMB number.’” No other information was submitted.

By decision dated March 17, 2004, the Office finalized the overpayment determination in the amount of \$19,520.82 for which appellant was not at fault. The Office acknowledged that the OWCP-20 form appellant received contained an expired OMB number; however, appellant’s request for waiver was denied. The Office also determined that \$172.00 would be withheld from his continuing compensation beginning April 17, 2004 to recover the debt.

### **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.<sup>2</sup> If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, the basic compensation rate for total disability.<sup>3</sup> Under section 8110 of the Act, an employee is entitled to compensation at the augmented rate of 3/4 of his weekly pay if he has one or more dependents.<sup>4</sup> A child is considered a dependent if he or she is under 18 years of age, is over 18 but is unmarried and incapable of self-support because of a physical or mental disability or is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university or training program.<sup>5</sup> If a claimant receives augmented compensation during a period where he has no eligible dependents, the difference between the compensation he was entitled to receive at the 2/3 compensation rate and the augmented compensation received at the 3/4 rate constitutes an overpayment of compensation.<sup>6</sup>

---

<sup>1</sup> 20 C.F.R. § 10.438.

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8105(a). *See also Duane C. Rawlings*, 55 ECAB \_\_\_\_ (Docket No. 02-2172, issued March 8, 2004).

<sup>4</sup> 5 U.S.C. § 8110.

<sup>5</sup> 5 U.S.C. §§ 8110(a)(1) and 8101(17); 20 C.F.R. § 10.405. *See Leon J. Mormann*, 51 ECAB 680 (2000).

<sup>6</sup> *Diana L. Booth*, 52 ECAB 370 (2001) (the Board held that as the claimant received compensation at the augmented rate for certain periods, even though she had no dependents, she received an overpayment of compensation).

### **ANALYSIS -- ISSUE 1**

Appellant received compensation under the Act for relevant periods of time following his May 3, 1991 injury. Beginning June 23, 1997 he was totally disabled.<sup>7</sup> During the period June 20, 1992 to May 17, 2003, appellant had only one eligible dependent, his son, N'Gia T. Simmons, who became 18 years old on September 25, 1990. The record contains no evidence that his son is disabled due to a mental or physical condition. Appellant's son would not qualify as a dependent unless he was an unmarried student attending an approved full-time course of study, had not completed four years of post high school education and had not completed the academic semester in which he became 23 years old.<sup>8</sup> Appellant submitted evidence establishing that his son was a full-time student in an approved program for the periods August 28, 1991 to June 19, 1992 and August 30, 1993 to April 29, 1994 and for the period August 28 to December 15, 1995. Although appellant's son turned 23 on September 25, 1995, he still qualified for a dependent during the entire period of August 28 to December 15, 1995 as augmented compensation is payable through the end of the semester. Therefore, his son qualified as a dependent for those periods, entitling appellant to receive compensation at the augmented three quarters rate. The record reflects that appellant's son continued to be enrolled full time as a student for periods on and after January 8, 1996 until he received his master's degree in April 2003. However, his eligibility as a dependent ended following the end of the semester in which he turned 23 years old. Therefore, appellant did not have a dependent for the periods on and after January 8, 1996 to April 2003. Appellant received augmented compensation for the period June 18, 1991 through May 17, 2003, although he had no dependents with the exception of the periods August 28, 1991 to June 19, 1992, August 30, 1993 to April 29, 1994, and August 28 to December 15, 1995. The \$19,520.82 difference between the basic or 2/3 compensation rate appellant should have received (\$167,004.71) and the augmented or 3/4 compensation rate he did receive (\$186,525.53), constitutes an overpayment of compensation. The Board finds that the Office correctly determined the fact and the amount of overpaid compensation in this case.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8129 of the Act, an overpayment must be recovered unless 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>9</sup> Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.<sup>10</sup> However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.<sup>11</sup> The Office must determine whether recovery of

---

<sup>7</sup> Appellant had previously been paid compensation at a reduced rate for the period March 13, 1995 to June 22, 1997 on a loss of wage-earning capacity.

<sup>8</sup> See *supra* note 5.

<sup>9</sup> 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437, 10.441(a).

<sup>10</sup> 20 C.F.R. § 10.433(a).

<sup>11</sup> *Jorge O. Diaz*, 51 ECAB 124 (1999).

the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>12</sup>

The applicable regulations 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 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 the beneficiary's assets do not exceed a specified amount as determined by the Office.<sup>13</sup> Additionally, 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 or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>14</sup>

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is required 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.<sup>15</sup> Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Office found appellant to be without fault and eligible for consideration of waiver. However, appellant did not submit any requested information regarding his financial situation. The applicable regulations specifically provide that the individual who receives an overpayment is responsible for providing financial information and that failure to submit the information within 30 days of the request shall result in the denial of waiver.<sup>17</sup> Appellant failed to submit evidence showing that he needs substantially all of the current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed, as requested by the Office in the December 24, 2003 letter. Therefore, he does not qualify for waiver under the "defeat the purpose of the Act" standard.<sup>18</sup> Further, there is no evidence in this case, nor did appellant allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received from June 20, 1992 through May 17, 2003. The Office properly denied waiver based on appellant's failure to respond to the December 24, 2003

---

<sup>12</sup> 20 C.F.R. § 10.434.

<sup>13</sup> 20 C.F.R. § 10.436.

<sup>14</sup> 20 C.F.R. § 10.437.

<sup>15</sup> 20 C.F.R. § 10.438(a).

<sup>16</sup> 20 C.F.R. § 10.438(b).

<sup>17</sup> See 20 C.F.R. § 10.438.

<sup>18</sup> See *Nina D. Newborn*, 47 ECAB 132 (1995).

letter. Pursuant to its regulations, the Office properly denied waiver of recovery of the overpayment in the amount of \$19,520.82.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 provides that, if an overpayment of compensation has been made to an individual entitled to further payments and 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 any hardship.<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

With respect to the Office's decision to deduct \$172.00 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is in accordance with section 10.441(a). In exercising its authority under section 10.441(a), the Office must take 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 any hardship."<sup>20</sup> Appellant did not respond to the Office's request for relevant financial information. The Board finds that the Office properly imposed a repayment from continuing compensation at the rate of \$172.00 every four weeks pursuant to its recovery procedures.<sup>21</sup>

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$19,520.82 for the period June 20, 1992 through May 17, 2003 because he did not have any qualifying dependants to be entitled to the augmented rate. The Board also finds that the Office did not abuse its discretion in denying waiver of the overpayment and in requiring repayment by deducting \$172.00 every four weeks from appellant's continuing compensation.

---

<sup>19</sup> 20 C.F.R. § 10.441 (1999).

<sup>20</sup> 20 C.F.R. § 10.441(a).

<sup>21</sup> See Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.300.8 (May 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member