

L5-S1. Appellant received compensation for temporary total disability at an augmented rate on the periodic rolls.

When the Office learned that appellant's husband had been separated from her since June 23, 2004, it made a preliminary finding on July 27, 2004 that she received an overpayment of \$204.43. The Office found that the overpayment occurred because she received compensation at an augmented rate from June 23 through July 10, 2004, during which time her husband was no longer considered to be a dependent. The Office also made a preliminary finding that she was not at fault in the matter of the overpayment. The Office asked appellant to submit an overpayment recovery questionnaire and supporting financial documentation within 30 days:

"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 or about September 10, 2004 the Office prepared a memorandum indicating that it had made a determination not to initiate recovery of the overpayment:

"An overpayment in the amount of \$204.43 has been calculated in this case. The claimant was found to be without fault in the overpayment. He [sic] is not in receipt of compensation benefits and has not responded to the preliminary finding letter. Recovery costs could exceed the amount of the debt. Therefore, it is determined that recovery of the overpayment will not be initiated."

On September 10, 2004 the Office notified appellant as follows: "This is to advise that we will not continue with collection of the debt in the amount of \$204.43 and you are not required to repay the debt."

In a decision dated November 5, 2004, the Office finalized its preliminary determinations. Noting that appellant was indeed receiving compensation every four weeks and that she did not respond to the preliminary finding of July 27, 2004, the Office determined that the overpayment would be collected from continuing compensation at the rate of \$50.00 per check until recovery was effected by March 19, 2005.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.¹ A disabled employee with

¹ 5 U.S.C. § 8102(a).

one or more dependents is entitled to have her basic compensation for disability augmented at a specified rate.² “Dependent” means a husband if he is a member of the same household as the employee, or he is receiving regular contribution from the employee for his support, or the employee has been ordered by a court to contribute to his support.³

ANALYSIS -- ISSUE 1

The record in this case establishes that appellant’s husband was not a member of her household beginning June 23, 2004. Moreover, there is no allegation or evidence that appellant contributed to her husband’s support after he left her household. From that date forward, he was not a “dependent” and she was not entitled to compensation at the augmented rate. An overpayment of \$204.43 therefore arose when the Office continued to pay compensation at the augmented rate through July 10, 2004.⁴ The Board will affirm the Office’s November 5, 2004 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁵ 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 Federal Employees’ Compensation Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁶

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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.⁷

² *Id.* at § 8110(b).

³ *Id.* at § 8110(a)(2).

⁴ Appellant does not contest the amount of the overpayment. The record shows that the Office calculated the amount by comparing the compensation she actually received from June 23 through July 10, 2004 with the compensation she should have received had the Office paid her at the proper rate.

⁵ 20 C.F.R. § 10.433(a) (1999).

⁶ *Id.* at § 10.434.

⁷ *Id.* at § 10.438.

ANALYSIS -- ISSUE 2

The Office notified appellant of the overpayment on July 27, 2004 and asked her to submit an overpayment recovery questionnaire and supporting financial documentation. The Office explained the purpose of this information and advised appellant that it would deny waiver if she did not submitted the information within 30 days. Because appellant failed to submit the requested information within 30 days of the request, the Office had no choice but to deny waiver. The Board will affirm the Office's November 5, 2004 decision in the issue was waiver.

LEGAL PRECEDENT -- ISSUE 3

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 her attention is called to 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 any hardship.⁸

ANALYSIS -- ISSUE 3

Because appellant was receiving compensation on the periodic rolls, the Office was required to recover the overpayment by decreasing her later payments. Knowing the probable extent of her future payments and the rate of her compensation, and with no response from appellant to its request for documentation of her financial circumstances, the Office properly took into account relevant factors so as to minimize any hardship on appellant in repaying the debt. The Board will affirm the Office's November 5, 2004 decision on the issue of recovery.

CONCLUSION

The Board finds that appellant received an overpayment of \$204.43 from June 23 through July 10, 2004. The Board further finds that the Office properly denied waiver and properly recovered the overpayment from appellant's continuing compensation.

⁸ 20 C.F.R. § 10.321(a); *see* 5 U.S.C. § 8129(a).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board