

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

---

**E.M., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
TECHNICAL LIBRARY BRANCH,  
Muscle Shoals, AL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-785  
Issued: August 17, 2007**

*Appearances:*

*Gene M. Hamby, Jr., Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 22, 2007 appellant, through her attorney, filed a timely appeal from the January 16, 2007 merit decision of the Office of Workers' Compensation Programs which denied waiver of an overpayment. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this overpayment decision.

**ISSUE**

The issue is whether the Office properly denied appellant waiver of her overpayment as collection of the overpayment did not defeat the purpose of the Federal Employees' Compensation Act.

**FACTUAL HISTORY**

This case has previously been before the Board. In a decision dated May 27, 2004, the Board found that the Office properly determined that an overpayment in the amount of \$10,452.31 occurred, that appellant was not at fault in the creation of the overpayment and that

she did not demonstrate that recovery of the overpayment would be against equity and good conscience. However, the Board found that the hearing representative did not properly develop the evidence in making her determination that recovery would not defeat the purpose of the Federal Employees' Compensation Act.<sup>1</sup> The Board noted that the evidence indicated that appellant's monthly income, including compensation and two monthly retirement checks, equaled \$1,937.62. The hearing representative documented expenses of \$1,220.20. The hearing representative allowed appellant's requested budget amounts for her automobile loan, gas for her car, insurance, household utilities and clothing. She did not allow any other monthly expenses noted by appellant including \$500.00 for food and \$200.00 for non reimbursable medical expenses. The hearing representative determined that, as appellant's monthly income of \$1,937.62 exceeded her monthly expenses of \$1,220.20, collection of the overpayment would not defeat the purpose of the Act. The Board found that in reaching this conclusion, the hearing representative did not make any allowance for food, home maintenance, medical expenses and maintenance of appellant's car. The Board noted that the hearing representative should have requested further information from appellant with regard to these expenses rather than just denying accounting for them, as appellant was clearly entitled to some credit for these items. The Board remanded this case for further development on the issue of whether collection of the overpayment would defeat the purpose of the Act.

By letter to appellant dated June 28, 2004, the Office asked appellant to complete an enclosed form with regard to her monthly expenses and to submit evidence, including receipts, in support thereof. In a decision dated August 5, 2004, the Office found that as appellant had not responded to its letter, the Office would continue to withhold \$250.00 per compensation payment.

Appellant appealed to the Board on August 16, 2004. On March 21, 2005 the Board issued an Order Remanding Case, finding that at the time of its August 5, 2004 decision, the Office was in possession of a letter from appellant's attorney dated July 9, 2004 which addressed the issue of appellant's monthly expenses and provided documents in support of the request for waiver. The case was remanded in order for the Office to consider the evidence and issue a new decision.<sup>2</sup>

By letter dated January 5, 2007, the Office indicated that appellant's debt had been repaid in full.

On January 12, 2007 appellant's attorney resubmitted the July 9, 2004 letter. He enclosed copies of checks including a sample month of checks for food. Counsel noted that appellant had to buy special food because of her health. He also enclosed checks for a sample month of utilities, clothes, home maintenance. Counsel submitted a bill for homeowner's insurance and bills with regard to her car. Appellant listed her monthly expenses as \$3,377.29 and monthly income as \$2,842.22. She further noted that she had \$36,149.44 in her savings account.

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8129(b).

<sup>2</sup> Docket No. 04-2034 (issued March 21, 2005).

By decision dated January 16, 2007, the Office found that claimant has not submitted evidence that would support waiver of the overpayment. The Office noted that although appellant's monthly income of \$2,842.22 did not exceed her monthly expenses of \$3,377.29 by more than \$50.00 per month, her assets of \$36,149.44 far exceed the resource base of \$4,800.00.

### **LEGAL PRECEDENT**

Section 8129(b) of the Act 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>3</sup> If a claimant is without fault in the creation of an 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.

According to section 10.436, the 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 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 determined by the Office from data provided by the Bureau of Labor Statistics.<sup>4</sup> For waiver under the defeat the purpose of the Act standard, an appellant must meet the two pronged test and show that she needs substantially all other current income to meet current ordinary and necessary living expenses<sup>5</sup> and that her assets do not exceed the resource base.<sup>6</sup>

An individual's liquid assets include but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds and certificates of deposit.<sup>7</sup> Nonliquid assets include but are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home and furnishings/supplies including more than two vehicles in the immediate family.<sup>8</sup>

---

<sup>3</sup> 5 U.S.C. § 8129(b).

<sup>4</sup> Office procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

<sup>5</sup> 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. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

<sup>6</sup> *W.F.*, 57 ECAB \_\_ (Docket No. 06-769, issued August 11, 2006).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(b) (May 2004).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (May 2004).

**ANALYSIS**

In evaluating whether recovery of the overpayment from appellant would defeat the purpose of the Act, the Office noted that appellant's monthly income does not exceed her monthly expenditures by more than \$50.00. However, the Office found that as appellant's assets of \$36,149.44 far exceed the resource base of \$4,800.00, appellant has not established that she is entitled to a waiver on the basis of defeating the purpose of the Act. The Office's decision is supported by the evidence. Appellant lists her assets as \$36,149.44 in her savings account. As this amount is greater than the resource base, the Office acted properly in refusing appellant's request for waiver under the standard of defeating the purpose of the Act as she did not meet both criteria to qualify for waiver of the recovery of the overpayment.

**CONCLUSION**

The Board finds that the Office properly denied appellant waiver of her overpayment as collection of the overpayment did not defeat the purpose of the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 16, 2007 is affirmed.

Issued: August 17, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board