

period due to his March 7, 2002 employment injury.¹ The Board further found that appellant received an overpayment in the amount of \$4,190.35 due to the Office's error in issuing compensation from May 1 to June 26, 2002 due to his accepted employment-related injury. The Board, however, found that the Office improperly determined that appellant was at fault in the creation of the overpayment and that he was therefore, ineligible for waiver. It found that there was no evidence of record establishing that, at the time appellant received payment for compensation during the stated period, he knew or should have known that the Office made an error in accepting his claim. The Board remanded the case to the Office to determine whether appellant was entitled to waiver of the \$4,190.35 overpayment. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.² The facts and the history relevant to the present issue are hereafter set forth.

By letter dated August 25, 2006, the Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents within 30 days. Appellant submitted an OWCP-20 form dated November 20, 2006 which provided his monthly income and expenses and his assets. He had \$3,863.60 in income and \$765.00 in social security benefits, totaling \$4,628.60. Appellant's expenses included \$800.00 for rent or mortgage, \$800.00 for food, \$175.00 for clothing, \$400.00 for utilities and \$1,274.68 for miscellaneous expenses, totaling \$3,449.00. His additional expenses included \$40.00 for a Thrift Savings Plan (TSP) loan, \$429.00 for a car note, \$250.00 for a truck note, \$340.00 for his wife's medical treatment, \$200.00 for vehicle fuel, \$209.00 for a home improvement loan and an unspecified amount for local, state and federal taxes, totaling \$1,653.00. Appellant's monthly expenses totaled \$5,102.00. He reported \$100.00 cash on hand, \$90.00 in his checking account and \$235.00 in his savings account, totaling \$425.00.

By decision dated January 19, 2007, the Office denied waiver of recovery of the \$4,190.35 overpayment. It found that appellant had monthly income of \$4,601.60 and expenses of \$3,728.00 which established that his monthly income exceeded his monthly expenses by \$873.60. The Office directed appellant to repay the overpayment in the amount of \$100.00 per month.

LEGAL PRECEDENT -- ISSUE 1

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.³ As noted, the statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "Adjustment recovery [of an overpayment] by the United States may not be made when [an] incorrect payment has been made to an individual who is without fault and when adjustment

¹ Docket No. 05-184 (issued July 27, 2006).

² On March 7, 2002 appellant, then a 41-year-old heavy mobile equipment repairer, filed a traumatic injury claim. On that date he hurt his lower back while moving parts around in a basket. When appellant pulled a basket, his lower back started burning and tightened up on him. By letter dated May 8, 2002, the Office accepted his claim for a broad-based central disc herniation at L4.

³ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

or recovery would defeat the purpose of [the Act] or would be against equity and good conscience.”⁴

Section 10.436 of the implementing regulation⁵ provides that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship in 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 or 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.⁶ 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 \$50.00.⁷

Section 10.437 provides that recovery of an overpayment is considered against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for determination on the issue regarding waiver of recovery of the overpayment. On appeal appellant contends that the Office failed to add his monthly expenses of \$1,274.68 and \$3,159.58, totaling \$4,434.26. He further contends that the remainder of his monthly income after deductions and expenses is \$194.34 and not \$873.60 as found by the Office.⁹ Appellant contends that, after repaying the overpayment in the amount of \$100.00 per month as directed by the Office, he would only have \$94.34 a month to support his family.

The Office, in its January 19, 2007 decision, denied waiver of recovery of the overpayment because it would not defeat the purposes of the Act. It found that appellant’s monthly income of \$4,601.60 exceeded his monthly expenses of \$3,728.00 by \$873.60. The Office, however, provided no explanation in its decision as to how his monthly income and

⁴ See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

⁵ 20 C.F.R. § 10.436.

⁶ An individual’s assets must exceed a resource based on \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent plus \$960.00 for each additional dependent. This includes all of the individual’s assets not exempt from recoupment. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.6(a)(1)(b) (December 23, 2004).

⁷ See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

⁸ 20 C.F.R. § 10.437.

⁹ The Board notes that appellant’s monthly income of \$4,601.60 as found by the Office exceeded his monthly expenses of \$4,434.26 by \$166.34 and not \$194.34 as alleged by appellant.

expenses were determined. It is an elementary principle of workers' compensation law, which the Board has often reiterated, that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.¹⁰ Appellant's overpayment recovery questionnaire indicates that he has monthly income of \$4,628.60 which includes \$3,863.60 in income and \$765.00 in social security benefits while the Office found that his income is \$4,601.00. His monthly expenses include \$800.00 for rent or mortgage, \$800.00 for food, \$175.00 for clothing, \$400.00 for utilities, \$1,274.68 for miscellaneous expenses, totaling \$3,449.68. Appellant's additional monthly expenses include \$40.00 for a TSP loan, \$429.00 for a car note, \$250.00 for a truck note, \$185.00 for his wife's medication, \$340.00 for his wife's psychiatric treatment, \$200.00 for vehicle fuel, \$209.00 for a home improvement loan and an unspecified amount for local, state and federal taxes, totaling \$1,653.00. His reported monthly expenses, excluding the unspecified loan, totals \$5,102.00.¹¹ The Office did not explain which expenses it did not accept in determining his total monthly expenses. It is necessary to remand the case for the Office to make appropriate findings on the issue, to be followed by an appropriate decision.

CONCLUSION

The Board finds that the Office erred in finding that appellant was not entitled to waiver of recovery of the overpayment as it did not provide adequate findings for reducing any of appellant's claimed expenses. On remand the Office should identify appellant's monthly income and expenses, determine whether he submitted adequate documentation to support his monthly income and expenses.¹²

¹⁰ *Robert L. Johnson*, 51 ECAB 480, 481 (2000); *Beverly Dukes*, 46 ECAB 1014, 1017 (1995); *Lynette Marie Torres*, 44 ECAB 968, 971-72 (1993); see 20 C.F.R. § 10.126.

¹¹ The Board notes that it is unclear as to how appellant determined his monthly expenses of \$1,247.68 and \$3,159.58 in light of the expenses he reported on his overpayment questionnaire.

¹² In light of the Board's disposition of the first issue on appeal, the second issue regarding the rate of recovery of the overpayment is moot.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2007 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision.

Issued: July 11, 2007
Washington, DC

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

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

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