

from the Office of Personnel Management (OPM) and under the Federal Employees' Compensation Act during the period December 31, 2001 to June 12, 2004. It improperly offset the overpayment amount by the \$15,450.56 unpaid remainder of a schedule award for the period March 25 to October 22, 2001 and improperly determined that appellant was at fault in the creation of the overpayment. The Board noted that, although health benefits were taken out by both the Office and OPM and pertained to the amount of overpayment, the situation arose due to appellant's failure to elect between OPM or Act benefits during the entire period dual benefits were received. The Board further found no evidence that the Office itself took double health benefits from appellant's compensation. The case was remanded to the Office to consider appellant's eligibility for waiver of the entire overpayment of \$22,227.75 and appropriate consideration of its regulations. The law and facts of the case, as set forth in the Board's prior decision, are incorporated herein by reference.

On February 3, 2006 the Office made a preliminary finding that appellant was without fault in creating the \$22,227.75 overpayment when he received benefits from both OPM and the Office during the period December 31, 2001 to June 12, 2004. Appellant was advised that he could request a telephone conference, a final decision based on the written evidence only or a precoupment hearing within 30 days if he believed that recovery of the overpayment should be waived. The Office requested that he complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support thereof within 30 days. It noted that waiver would be denied if appellant failed to furnish the information requested on the enclosed Form OWCP-20 or any other information needed to address a request for waiver within the 30 days.

By decision dated April 27, 2006, the Office denied waiver of recovery of the overpayment because he did not respond to its February 3, 2006 preliminary overpayment notice. The Office directed that appellant either repay the overpaid amount in full or contact the Office to arrange a repayment plan.

LEGAL PRECEDENT

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.² The statutory guidelines are found in section 8129(b) of the 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 or recovery would defeat the purpose of the Act or would be against equity and good conscience.³

Section 10.436 of the implementing regulations⁴ provides that recovery of an overpayment would 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

² See *Robert Atchison*, 41 ECAB 83, 87 (1989).

³ See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

⁴ 20 C.F.R. § 10.436.

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.⁵ 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 \$50.00.⁶

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in 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.⁷

Section 10.438 of the regulations provide that 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. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.⁸

ANALYSIS

On appeal appellant's attorney argued that the Office "double deducted" appellant's health insurance premiums. In the prior appeal, the Board found that the Office and OPM each withheld health benefit premiums due to appellant's failure to elect between OPM or Act benefits. It found no evidence that the Office deducted health benefits twice from appellant's compensation. As no further evidence was introduced as to this matter, the issue is *res judicata*.⁹

The Office found appellant to be without fault and eligible for consideration of waiver with regard to its finding that he received an overpayment in the amount of \$22,227.75. However, appellant did not timely submit any information regarding his financial situation. The applicable regulations provide that the individual who receives an overpayment is responsible for providing financial information. Failure to submit the requested financial information within 30 days of the request shall result in the denial of the waiver.¹⁰ As appellant failed to submit the requested

⁵ 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 base 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).

⁶ See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

⁷ 20 C.F.R. § 10.437.

⁸ *Id.* at § 10.438.

⁹ See *Clinton E. Clinton, Jr.*, 49 ECAB 476 (1998). See also *Robert Ringo*, 53 ECAB 258 (2001).

¹⁰ *Id.*

financial evidence, the Office, pursuant to its regulations, properly was requested to deny waiver of recovery of the overpayment amount of \$22,227.75.¹¹

CONCLUSION

The Board finds that the Office properly denied waiver of the \$22,227.75 overpayment in this case.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 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

¹¹ As the Office is not seeking recovery from continuing compensation, the Board does not have jurisdiction to review the manner of recovery of the overpayment. *See Miguel A. Muniz*, 54 ECAB 217 (2002).