

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

R.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Loomis, CA, Employer)

**Docket No. 07-1970
Issued: February 12, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 19, 2007 appellant filed a timely appeal from the April 17, 2007 decision of the Office of Workers' Compensation Programs finding that an overpayment of \$822.29 had been created and that waiver of the recovery of the overpayment was not warranted. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue of overpayment.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received an overpayment of compensation in the amount of \$822.29; and (2) whether the Office properly determined that waiver of the recovery of the overpayment was not warranted. On appeal, appellant contends that waiver is warranted because of the four-and-a-half-year delay in attempting to collect the overpayment.

FACTUAL HISTORY

On February 15, 1997 appellant, then a 45-year-old rural letter carrier, injured his left foot while walking on his route. The Office accepted his claim for left foot plantar fasciitis,

fibromatosis, and strain; left ankle strain; and aggravation of L4-5 disc aggravation. On March 20, 2000 appellant accepted a full-time light-duty position of modified clerk.

By decision dated September 22, 2000, appellant was issued a schedule award for 37 percent permanent impairment of his left leg. He was awarded pay for 106.56 weeks from September 1, 2000 to September 16, 2002.

On October 2, 2002 the Office paid appellant \$822.29 as wage-loss compensation for the period September 17 to October 2, 2002. On October 18, 2002 appellant notified the Office that he had received a payment that he did not understand because he was working in a full-time capacity.

On October 22, 2002 the Office made a preliminary finding that an overpayment of \$822.29 had occurred when it erroneously placed appellant on the periodic rolls, and that appellant was not at fault in its creation. The Office offered appellant the opportunity to seek waiver of the overpayment.

On October 31, 2002 appellant requested waiver of the overpayment. He reported that his gross monthly income was \$8,400.00. Appellant stated that his monthly expenses included \$1,100.00 for housing, \$500.00 for food, \$280.00 for utilities and \$325.00 for other expenses. He stated that he and his spouse had approximately \$500.00 in cash, \$7,000.00 in a checking account, \$25,000.00 in a savings account, and \$9,000.00 in stocks and bonds, for a total of \$41,500.00 in funds.

By decision dated April 17, 2007, the Office finalized its preliminary determination that an overpayment of \$822.29 had occurred because the Office erroneously issued compensation for loss of wages for a period in which appellant was employed without wage loss. On consideration of the evidence appellant submitted, it denied his request for waiver, finding that recovery of the overpayment would not be against equity or good conscience. The Office stated that appellant should repay the overpayment by writing a check for the full amount.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.¹ The Office regulations state that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.²

¹ 5 U.S.C. §§ 8101-8193, 8102(a).

² 20 C.F.R. § 10.500(a).

ANALYSIS -- ISSUE 1

On October 2, 2002 the Office mistakenly placed appellant on the periodic rolls for wage-loss compensation while he was employed and issued him payment in the amount of \$822.29 for the period September 17 to October 2, 2002. During the entirety of the period covered by this payment, appellant was employed in a full-time position and had no wage loss. The record therefore establishes that appellant was not entitled to the October 2, 2002 payment from the periodic rolls. The Board finds that, as appellant was employed with no lost wages during the period for which he received wage-loss compensation, the Office correctly determined that appellant was overpaid in the amount of \$822.29.

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.³ 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 Act or; (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁴

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: (a) 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 (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. A higher amount is specified for a beneficiary with one or more dependents.⁵ 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.⁶ Recovery of an overpayment is also considered to be against equity and good conscience when any 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

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

³ 20 C.F.R. § 10.433(a).

⁴ 20 C.F.R. § 10.434.

⁵ 20 C.F.R. § 10.436.

⁶ 20 C.F.R. § 10.437(a).

⁷ 20 C.F.R. § 10.437(b).

against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.⁸

ANALYSIS -- ISSUE 2

On October 31, 2002 appellant reported that his gross monthly income was \$8,400.00. He listed monthly expenses totaling \$2,205.00, including \$1,100.00 for housing, \$500.00 for food, \$280.00 for utilities and \$325.00 for other expenses. Appellant stated that he and his spouse had approximately \$500.00 in cash, \$7,000.00 in a checking account, \$25,000.00 in a savings account and \$9,000.00 in stocks and bonds, for a total of \$41,500.00 in assets.

Office procedures provide that 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, *i.e.*, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses plus \$50.00.⁹ Appellant's monthly income of \$8,400.00 exceeds his monthly expenses of \$2,205.00 by \$6,195.00, well in excess of the \$50.00 base provided in Office procedures. Because appellant's monthly income is sufficient to meet his monthly expenditures, it was not necessary for the Office to make a finding about appellant's assets. The Board, therefore, finds that the Office properly concluded that recovery of the overpayment would not cause financial hardship to appellant or defeat the purpose of the Act. Furthermore, appellant made no argument that he gave up a valuable right or changed his position for the worse in reliance on the overpaid compensation. The Office properly determined that recovery would not be against equity and good conscience.

On appeal, appellant questioned the period of time that the Office waited before making a final determination about the overpayment. The Board notes that the Act and its implementing regulations do not contain a time limitation for recovery of overpayments. As discussed above, the only grounds for waiver are where repayment would defeat the purpose of the Act or be against equity and good conscience. Appellant has not alleged that circumstances have changed since he completed his questionnaire in October 2002 such that recovery would now be inappropriate. Specifically, he has not alleged that he now needs substantially all of his income to meet ordinary and necessary living expenses, that he would experience severe financial hardship in attempting to repay the debt, or that he gave up a valuable right or changed his position for the worse. Therefore, the Board finds that the Office properly denied waiver of the overpayment and is required by law to recover the debt.¹⁰

⁸ 20 C.F.R. § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6200.6(a)(3)(3) (October 2004).

¹⁰ With respect to the recovery of the overpayment, the Board notes that its jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation benefits under the Act. As the record does not indicate that appellant is receiving continuing compensation benefits, the Board does not have jurisdiction over the Office's decision to recover the overpayment by requiring appellant to remit a check for \$822.29. *Levon H. Knight*, 40 ECAB 658 (1989).

CONCLUSION

The Board finds that appellant received an overpayment in compensation in the amount of \$822.29 and that the Office properly denied waiver of the recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2007 is affirmed.

Issued: February 12, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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