

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Harrisburg, PA, Employer**

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**Docket No. 08-1402
Issued: March 3, 2009**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 15, 2008 appellant, through her attorney, filed a timely appeal from an April 8, 2008 decision of the Office of Workers' Compensation Programs denying waiver of recovery of an overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the overpayment issue.

ISSUES

The issues are: (1) whether the Office properly denied waiver of recovery of the overpayment; and (2) whether the Office properly required repayment of the overpayment by deducting \$100.00 every four weeks from her continuing compensation.

FACTUAL HISTORY

This case is before the Board for the second time. On April 2, 2008 the Board affirmed an April 17, 2007 overpayment decision with respect to amount, but set it aside as to the issue of waiver of the overpayment and remanded the case for further proceedings.¹ The Office found

¹ Docket No. 07-1355 (issued April 2, 2008).

that an overpayment in the amount of \$2,263.75 was created during the period December 21, 2005 through September 30, 2006 as appellant received wage-loss compensation at the augmented rate of 75 percent when she was only entitled to the statutory rate of 66 2/3 percent. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.²

The Office received a completed OWCP-20 dated March 13, 2007. Appellant reported \$2,910.00 in income, \$1,939.51 in available funds and \$3,343.00 in expenses. She had approximately \$15,600.00 in a credit union account but noted that this money was to be returned to Erie Insurance and enclosed a letter from March 29, 2007 from Erie Insurance. Appellant did not provide any supporting financial documents, stating on the form that she did not have any documents. She requested waiver of the recovery of the overpayment and that the Office make a decision on the written record.

In a letter dated April 10, 2007, the Office requested that appellant clarify the rental apartments owned jointly with her husband and their management of the rental apartments since December 21, 2005. It noted that appellant failed to list the income and expenses from this rental property on her overpayment financial form. The Office also requested appellant submit copies of tax returns from the filing years of 2004, 2005 and 2006. The requested information was not submitted by appellant.

By decision dated April 8, 2008, the Office denied waiver of recovery of the \$2,263.75 overpayment.³ It found that a completed overpayment recovery form indicated that appellant had monthly income of \$2,910.00 and expenses of \$3,343.00, but there was no supporting documentation establishing the accuracy of these amounts. The Office noted that appellant failed to provide any financial information on the rental apartments owned jointly with her ex-husband. It directed repayment of the overpayment in the amount of \$100.00 a month from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

Section 8129(b) of the Federal Employees' Compensation 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."⁴ If a claimant is without fault in the

² On September 10, 2002 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim alleging that on that date she injured her lower back, lower abdomen, right shoulder and neck when a truck ran into her jeep while she was delivering mail. The Office accepted the claim for cervical strain and right shoulder strain, which was subsequently expanded to include aggravation of spondylolisthesis and degenerative disc disease and recurrent major depressive disorder in partial remission and granted retroactive authorization for a January 24, 2003 L5-S1 lumbar fusion surgery. It placed appellant on the periodic rolls for temporary total disability beginning September 5, 2004.

³ The Office noted that the amount currently owed by appellant was \$1,195.20 as \$100.00 had been deducted from her continuing compensation since April 17, 2007.

⁴ 5 U.S.C. § 8129(b).

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. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 through 10.437 of the Office's regulations.

The Office's implementing federal regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office.⁵ Failure to submit the requested information shall result in the denial of waiver.⁶

ANALYSIS -- ISSUE 1

The Office found that appellant was not at fault in creating the overpayment. Although appellant was without fault in creating the overpayment, she nonetheless bears responsibility for providing the financial information necessary to support her request for waiver of the recovery of the overpayment. Appellant completed an overpayment recovery questionnaire, but submitted no financial documentation to support the amounts listed. When the Office issued its preliminary determination on March 6, 2007, it made clear that appellant was to attach supporting financial documents to support the income and expenses listed so that it could determine whether waiver of the overpayment was warranted and if not, a reasonable method for collection. Following the submission of a completed overpayment recovery questionnaire the Office, in an April 10, 2007 letter, requested that appellant clarify certain financial information regarding the rental apartments owned jointly with her ex-husband. It also asked that she explain the management of the rental apartments since December 21, 2005 and her involvement with this property. The Office also requested appellant to submit copies of tax returns from the filing years of 2004, 2005 and 2006. It properly explained that failure to submit the requested information would result in the denial of waiver. Because appellant failed to submit the evidence requested by the Office, it properly denied waiver of the overpayment pursuant to 20 C.F.R. § 10.438(b).

LEGAL PRECEDENT -- ISSUE 2

Section 10.441 provides that, if an overpayment of compensation has been made to an individual entitled to further payments and 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 hardship.⁷

⁵ 20 C.F.R. § 10.438(a).

⁶ *Id.* at § 10.438(b).

⁷ *Id.* at § 10.441.

ANALYSIS -- ISSUE 2

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, she completed an overpayment recovery questionnaire but failed to submit additional supportive financial documents as requested by the Office prior to the issuance of the April 8, 2008 overpayment decision. When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.⁸ The Board finds that the Office did not abuse its discretion in following its regulations and deducting \$100.00 every 28 days.

CONCLUSION

The Board further finds that the Office properly denied waiver of the recovery of the overpayment. The Board finds that the Office properly required repayment of the overpayment by deducting \$200.00 from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ *Ralph P. Beachum, Sr.*, 55 ECAB 442, 448 (2004); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 1994).