



The record indicates that appellant returned to full-time, light-duty work on August 16, 2007. A vocational rehabilitation nurse's report dated September 20, 2007 reported that she returned to full-time work on August 16, 2007.

In a letter dated September 12, 2008, the Office made a preliminary determination that an overpayment of \$1,504.34 had been created from August 17 to September 1, 2007. It noted that appellant had received a \$2,477.73 compensation payment for the period August 5 to September 1, 2007, but she should have received \$973.39 in compensation for the period August 5 to 15, 2007. With respect to fault, the Office found appellant was not at fault in creating the overpayment. Appellant was advised to submit an OWCP-20 and supporting financial documents so that the Office could consider the issue of waiver of the overpayment.

On October 3, 2008 appellant submitted an OWCP-20 form indicating that she had \$3,380.00 in monthly income and \$4,432.00 in monthly expenses. By letter dated November 7, 2008, the Office advised appellant that she must submit additional evidence, such as bank account statements and copies of bills, to support the income and expenses listed. It advised her to submit the requested information within 15 days.

By decision dated December 3, 2008, the Office determined that an overpayment of \$1,504.32 was created.<sup>1</sup> It denied waiver of the overpayment on the grounds that appellant had not submitted the requested financial information.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8116 of the Federal Employees' Compensation Act defines the limitations on the right to receive compensation benefits. This section of the Act provides that while an employee is receiving compensation, she may not receive salary, pay or remuneration of any type from the United States, except in limited circumstances.<sup>2</sup> 20 C.F.R. § 10.500 provides that "compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury."

### **ANALYSIS -- ISSUE 1**

Appellant did not contest on appeal that an overpayment of compensation was created. The record establishes that she returned to full-time work on August 16, 2007. As noted, compensation for wage loss is available only for periods when a claimant's employment-related condition prevents her from earning the date-of-injury wages. Appellant received a compensation payment covering the period August 5 to September 1, 2007. Since she was entitled to wage-loss compensation only from August 5 to 15, 2007, an overpayment of compensation was created.

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<sup>1</sup> There were no additional calculations as to the amount of the overpayment. It appears the Office inadvertently reported the amount as \$1,504.32 instead of \$1,504.34.

<sup>2</sup> 5 U.S.C. § 8116(a).

As to the amount of the overpayment, the Office noted that appellant had received \$2,477.73 in compensation from August 5 to September 1, 2007, but calculated that she should have received \$973.39 from August 5 to 15, 2007. Accordingly, an overpayment of \$1,504.34 was created. The Office erroneously reported the amount as \$1,504.32 in its final decision.

### **LEGAL PRECEDENT -- ISSUE 2**

The waiver or refusal to waive an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines.<sup>3</sup> These statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment or recovery [of an overpayment] 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>4</sup> Since appellant was found to be without fault in the creation of the overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.436 of the implementing regulations<sup>5</sup> provide that recovery of an overpayment will defeat the purpose of the Act if 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.<sup>6</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.<sup>7</sup>

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.<sup>8</sup>

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<sup>3</sup> *Robert Atchison*, 41 ECAB 83 (1989).

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

<sup>5</sup> 20 C.F.R. § 10.436 (1999).

<sup>6</sup> An individual's assets must exceed a resource base of \$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 6.200.6 (October 2004).

<sup>7</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

<sup>8</sup> 20 C.F.R. § 10.437 (1999).

With respect to a claimant's obligations to submit financial information, the Office regulations provide:

“(a) 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 the overpayment would defeat the purpose of the [Act], or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Appellant submitted an OWCP-20 overpayment recovery questionnaire dated September 30, 2008. The Office requested in its September 12, 2008 preliminary determination letter that appellant submit financial documents, such as bank statements, to support the amounts reported on the OWCP-20. In addition, after receiving the OWCP-20, the Office specifically requested additional financial documentation to support the expenses and income she listed on the form. The November 7, 2008 letter advised appellant to submit the requested information within 15 days. No documentation was received.

On appeal, appellant contends that she submitted additional documentation which the Office failed to review. The record, however, establishes only that the Office received evidence after the December 3, 2008 final decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>10</sup> At the time of the December 3, 2008 decision, appellant had not responded to the request for supportive financial documents. The Board finds that pursuant to 20 C.F.R. § 10.438, the Office properly denied waiver of the overpayment. As to the recovery of the overpayment, the Office requested that appellant send a payment for the full amount of the overpayment. The Board's jurisdiction is limited to recovery from continuing compensation benefits and therefore the issue is not before the Board on this appeal.<sup>11</sup>

### **CONCLUSION**

The Board finds the evidence establishes that an overpayment of \$1,504.32 was created, and the Office properly denied waiver of the overpayment.

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<sup>9</sup> *Id.* at § 10.438.

<sup>10</sup> *Id.* at § 501.2(c)(1) (2008).

<sup>11</sup> *See Levon H. Knight*, 40 ECAB 658, 665 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 3, 2008 is affirmed.

Issued: November 6, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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