

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

R.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 09-1801
Issued: April 26, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2009 appellant filed a timely appeal from the June 12, 2009 merit decision of the Office of Workers' Compensation Programs, which denied waiver of an overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether appellant received an \$18,288.94 overpayment of compensation from July 31, 2002 to May 12, 2007; (2) whether the Office properly denied waiver of the recovery of the overpayment; and (3) whether the Office properly set the rate of recovery from continuing compensation payments.

FACTUAL HISTORY

On March 4, 1971 appellant, then a 26-year-old letter carrier, sustained an injury in the performance of duty when he fell down a flight of stairs. The Office accepted his claim for post-traumatic arthritis in both knees, among other conditions. Appellant eventually had both knees

replaced. He received compensation for disability on the periodic rolls at the augmented rate for dependents.

On September 19, 2006 appellant indicated that he was no longer married, that his wife did not live with him, but that he made regular direct payments for her support. The Office requested proof of ongoing financial support for his spouse. Appellant responded that he paid the mortgage and property taxes on their home and premiums for family health insurance. The Office informed him that such impairments did not suffice to keep his compensation at the augmented rate. After May 12, 2007, the Office reduced appellant's compensation to reflect the statutory rate of 66 2/3 percent. Appellant informed the Office that he was divorced on July 30, 2003 and had not remarried. On September 5, 2002 he indicated on a Form CA-1032 that his wife stopped being a dependent on July 31, 2002 due to "separation divorce."

On May 8, 2009 the Office made a preliminary determination that an overpayment of \$18,288.94 arose from July 31, 2002 to May 12, 2007 because appellant received compensation at the augmented rate for dependents when he had no eligible dependents. It found him without fault in the matter. The Office asked appellant to submit an attached overpayment recovery questionnaire, which would allow it to consider waiving the overpayment and determine, if necessary, a reasonable method for collection. It notified appellant that failure to submit the requested information within 30 days would result in a denial of waiver.

In a decision dated June 12, 2009, the Office finalized its preliminary determination. As it received no response from appellant, it denied waiver and determined that the overpayment should be collected by deducting \$305.00 from his ongoing compensation payments. The Office explained that, when an individual fails to provide the requested information on income, expenses and assets, it should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.

On appeal, appellant requested waiver on the grounds that the Office and the employer failed to follow the law in the handling of his case beginning on September 3, 1983. As a result, his quality of life was reduced. Appellant added that the Office waived an overpayment due to financial hardship in 2000.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ A disabled employee with one or more dependents is entitled to have his basic compensation augmented from two-thirds to three-fourths of his monthly pay.² A "dependent" means -- a wife if (a) she is a member of the same household as the employee; (b) she is receiving regular

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8110(b).

contributions from the employee for her support; or (c) the employee has been ordered by a court to contribute to her support.³

ANALYSIS -- ISSUE 1

Appellant does not contest the fact or amount of the overpayment, which are well established. He received compensation at the 75 percent augmented rate for dependents from July 31, 2002 to May 12, 2007, while he was divorced and had no eligible dependents. Appellant's ex-wife was not a member of the same household, he did not pay alimony or similar regular payments for her support, and he produced no court order to contribute to her support. He received more compensation than he was entitled to receive during that period.

The Office compared how much compensation appellant actually received during the period with the compensation he should have received at the basic statutory compensation rate. The difference, \$18,288.94, is the amount of the overpayment. The Office explained the calculation in its May 8, 2009 preliminary determination, and the record contains the worksheets and compensation payment history the Office used to arrive at this amount. The Board will affirm the Office's June 12, 2009 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

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 recovery of an 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. 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.⁴

ANALYSIS -- ISSUE 2

The Office properly notified appellant of its preliminary determination and explained that failure to submit the requested financial information within 30 days would result in a denial of waiver. When it did not receive a completed overpayment recovery questionnaire from appellant, it denied waiver under the implementing federal regulations.

Appellant's financial circumstances in the year 2000, if disclosed, might have warranted waiver of an overpayment at that time. Those circumstances have no bearing on whether Office regulations require a denial of waiver in 2009 after appellant failed to submit necessary information on his income, expenses and assets. The Board will affirm the Office's June 12, 2009 decision on the issue of waiver.

³ *Id.* at § 8110(a)(1).

⁴ 20 C.F.R. § 10.438.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of the Act provides that, when an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.⁵ Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation having due regard to 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 any resulting hardship upon such individual.⁶

ANALYSIS -- ISSUE 3

In the absence of the financial information provided by the overpayment recovery questionnaire, the Office was left to consider the probable extent of appellant's future compensation payments, the rate of his compensation and minimum collection guidelines. As the Office gave due regard to relevant factors, the Board finds that the Office properly set the rate of recovery from continuing compensation payments at \$305.00.⁷

The Board will affirm the Office's June 12, 2009 decision on the issue of recovery.

Appellant contends that both the Office and his employer failed to follow the law in the handling of his case beginning on September 3, 1983 and that his quality of life thereby suffered. The Board has no authority to rule on these matters. On this appeal the Board's jurisdiction is limited to reviewing the Office's June 12, 2009 overpayment decision. As noted, the regulations required the Office to deny waiver of the recovery of the overpayment that arose from July 31, 2002 to May 12, 2007. Because the Office did not abuse its discretion in recovering the overpayment from future compensation payments, the Board will affirm the Office's decision.

CONCLUSION

The Board finds that appellant received an \$18,288.94 overpayment of compensation from July 31, 2002 to May 12, 2007, that the Office properly denied waiver of the recovery of the overpayment, and that the Office properly set the rate of recovery from continuing compensation payments.

⁵ 5 U.S.C. § 8129(a).

⁶ 20 C.F.R. § 10.321(a).

⁷ See *Gail M. Roe*, 47 ECAB 268 (1995) (when an individual failed to provide the requested information on income, expenses and assets, the Board found that the Office did not abuse its discretion in following minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2010
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