

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

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E.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Riverdale, GA, Employer )

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**Docket No. 10-1088  
Issued: November 8, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 15, 2010 appellant filed a timely appeal from a March 3, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied waiver of a \$2,627.61 overpayment of compensation.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. By decision dated January 22, 2010, the Board affirmed an April 7, 2009 Office decision with respect to fact and amount of a \$2,627.61 overpayment of compensation.<sup>1</sup> With respect to waiver of the overpayment, the Board

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<sup>1</sup> Docket No. 09-1284 (issued January 22, 2010). The Board also issued a February 16, 2010 decision regarding a schedule award for the legs. Docket No. 10-170 (issued February 16, 2010).

remanded the case for proper consideration of all the relevant evidence of record.<sup>2</sup> The history of the case as reviewed by the Board in its prior decision is incorporated herein by reference.

On remand, the Office sent appellant a February 4, 2010 letter noting the Board's decision and requested current financial information, including an enclosed overpayment recovery questionnaire (OWCP-20) and proof of all monthly income and expenses, such as bank statements. On February 11, 2010 appellant submitted a statement that he had already provided the necessary information.

In a March 3, 2010 memorandum of telephone call (CA-110), an Office hearing representative spoke to appellant regarding his relevant financial information. She advised appellant that the record did not contain statements regarding some of the expenses claimed. The Office hearing representative prepared a form (OWCP-20 data) dated March 3, 2010 enumerating his income, expenses and assets. She found that appellant had monthly household income of \$9,550.00, based on \$4,050.00 of income from him and \$5,500.00 from his spouse. The expenses totaled \$9,482.00, which included \$5,964.79 in household expenses such as rent/mortgage, automobile expenses, food and clothing and \$3,517.66 in other liabilities such as credit cards and loans. The assets were reported as \$2,208.72.

By decision dated March 3, 2010, the Office hearing representative denied waiver of the overpayment. She found that appellant's income exceeded expenses by more than \$50.00. The hearing representative also noted that he had not provided documentation for many of the expenses claimed.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act, "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."<sup>3</sup> Since the Office found appellant to be without fault in the creation of the overpayment, it 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 to 10.437 of Title 20 of the Code of Federal Regulations.

Title 20 C.F.R. § 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses" and also, if the beneficiary's assets do not exceed a specified amount

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<sup>2</sup> The record indicated that appellant had submitted evidence on April 2, 2009 that had not been considered by the Office.

<sup>3</sup> 5 U.S.C. § 8129(b).

as determined by the Office from data provided by the Bureau of Labor Statistics.<sup>4</sup> For waiver under the “defeat the purpose of the Act” standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses and that his assets do not exceed the resource base.<sup>5</sup>

According to 20 C.F.R. § 10.437, recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; and (b) the 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.

An individual is deemed to need substantially all of his or her current income to meet ordinary and necessary living expenses if monthly income does not exceed expenses by more than \$50.00.<sup>6</sup>

### ANALYSIS

The Board remanded the case for the Office to consider the relevant evidence of record on the waiver issue. On remand, the Office requested that appellant submit additional financial evidence relevant to the issue of waiver of the \$2,627.61 but he did not provide additional evidence. Based on the evidence of record, the Office hearing representative reviewed the claimed income and expenses and found that appellant had \$9,550.00 in monthly income and \$9,482.00 in monthly expenses. This finding was based on information provided by appellant at March 10, 2009 and March 3, 2010 conferences, as well as any documentation provided on April 2, 2009. The Office hearing representative provided a detailed OWCP-20 data worksheet that listed each claimed expense.

As noted, an individual is deemed to need substantially all of his or her monthly income to meet ordinary and necessary living expenses when income does not exceed expenses by more than \$50.00. In this case, income did exceed expense by more than \$50.00. Since appellant is not deemed to need substantially all of his income to meet ordinary and necessary living expenses, recovery of the overpayment would not defeat the purpose of the Act under 5 U.S.C. § 8129(b).

On appeal, appellant stated that he did submit proof of mortgage, home equity payment, medical expenses and charitable contributions, contrary to the finding of the Office hearing representative. The Board notes that the record does not contain specific documentation of the above expenses. Moreover, the Office hearing representative included the claimed expenses in her calculations, despite the lack of documentation. The Board finds that the hearing

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<sup>4</sup> Office procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

<sup>5</sup> See *Robert E. Wenholz*, 38 ECAB 311 (1986).

<sup>6</sup> *Jorge O. Diaz*, 51 ECAB 124, 128 (1999); *Marlon G. Massey*, 49 ECAB 650 (1998); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

representative properly considered the evidence and made detailed findings regarding the claimed expenses and income.

Appellant also stated that his monthly income reported as \$4,050.00 was for gross income, not net income. However, the Office hearing representative based her calculations on the information provided by appellant on the OWCP-20 and the telephone conferences. Appellant had an opportunity to submit additional relevant evidence regarding income and expenses. The Board cannot consider evidence submitted for the first time on appeal, as its jurisdiction is limited to evidence that was before the Office at the time of the final decision.<sup>7</sup> Based on the evidence of record, the Board finds that the Office properly denied waiver of the overpayment.

**CONCLUSION**

The Board finds that the Office properly denied waiver of the overpayment as the evidence does not establish that recovery would defeat the purpose of the Act or be against equity and good conscience.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 3, 2010 is affirmed.

Issued: November 8, 2010  
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

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<sup>7</sup> 20 C.F.R. § 501.2(c)(1).