

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

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**R.L., Appellant**

**and**

**DEPARTMENT OF STATE, AMERICAN  
EMBASSY, Budapest, Hungary, Employer**

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**Docket No. 10-115  
Issued: September 3, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 9, 2009 appellant filed a timely appeal from an October 1, 2009 merit decision of the Office of Workers' Compensation Programs regarding waiver of an overpayment. 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 \$15,372.70 overpayment of compensation.

**FACTUAL HISTORY**

The case has been before the Board on prior appeals. In a May 13, 2004 decision, the Board found appellant's pay rate should include the value of living quarters provided, as set forth in 5 U.S.C. § 8114(e).<sup>1</sup> The case was remanded for the Office to determine the appropriate date

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<sup>1</sup> 55 ECAB 546 (2004).

for the pay rate determination, the value of the living quarters and a determination as to whether post allowance was appropriate in this case. In a June 5, 2006 decision, the Board found that the appropriate date to establish pay rate was the date of injury, July 4, 1998.<sup>2</sup> As to fact and amount of an overpayment, the Board noted there remained a question as to the value of the living quarters provided, and the case was remanded for further development. By order dated November 30, 2007, the Board remanded the case again for further development as to the value of the living quarters provided.<sup>3</sup> In a decision dated July 14, 2009, the Board affirmed the finding of a \$15,372.70 overpayment of compensation.<sup>4</sup> The Board remanded the case on the issue of waiver, noting that the financial evidence of record was nearly three years old at the time of a July 2, 2008 Office decision. The history of the case is provided in the prior Board decisions and orders and is incorporated herein by reference.

On August 17, 2009 the Office received an August 9, 2009 overpayment recovery questionnaire (Form OWCP-20). Appellant also submitted a narrative statement regarding his income and expenses. A memorandum of telephone call (Form CA-110) dated August 27, 2009 indicated that the Office spoke with appellant regarding his income and expenses.

By letter dated August 27, 2009, the Office advised appellant that a July 2, 2008 overpayment decision had been issued, and no payment had been received. The Office stated that if they did not receive payment or some indication that appellant intended to cooperate within 30 days, interest or administrative charges may be added.

In a decision dated October 1, 2009, the Office noted that it had received the OWCP-20, and “after careful review we find that we cannot grant you a waiver of recovery.” No additional explanation was provided.

### **LEGAL PRECEDENT**

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office’s discretion pursuant to statutory guidelines.<sup>5</sup> These statutory guidelines are found in section 8129(b) of the Federal Employees’ Compensation 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>6</sup> Since the Office found appellant 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.

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<sup>2</sup> Docket No. 06-282 (issued June 5, 2006).

<sup>3</sup> Docket No. 07-1093 (issued November 30, 2007).

<sup>4</sup> Docket No. 08-2406 (issued July 14, 2009).

<sup>5</sup> *Robert Atchison*, 41 ECAB 83 (1989).

<sup>6</sup> *See* 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361 (1994).

Section 10.436 of the implementing regulations<sup>7</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>8</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>9</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>10</sup>

### ANALYSIS

In the present case, the Board had remanded the case for further development on the waiver issue. Although appellant filed an appeal of what he described as an August 27, 2009 decision, the letter dated August 27, 2009 was an informational letter regarding the overpayment of compensation, not a final decision. The October 1, 2009 letter, however, clearly made a final determination on waiver: "after careful review we find that we cannot grant you a waiver of recovery."<sup>11</sup>

While the Office stated that it performed a "careful review," the decision provided no findings to support the decision. There was no discussion as to the evidence regarding waiver, such as documented income, expenses and assets. Moreover, there was no discussion of the legal precedent regarding waiver and an explanation as to why the evidence in this case did not warrant waiver of the overpayment. It is a well-established principle that the Office must make proper findings of fact and a statement of reasons in its final decisions.<sup>12</sup>

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<sup>7</sup> 20 C.F.R. § 10.436 (1999).

<sup>8</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 (June 2009).

<sup>9</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

<sup>10</sup> 20 C.F.R. § 10.437 (1999).

<sup>11</sup> The Board has jurisdiction to consider appeals from final decisions of the Office in any case arising under the Act. 20 C.F.R. § 501.2(c).

<sup>12</sup> *See Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

The case will accordingly be remanded to the Office for a proper decision on waiver of the overpayment. After such development as the Office deems necessary, it should issue an appropriate decision.<sup>13</sup>

**CONCLUSION**

The Board finds that the Office did not make proper findings on the waiver issue and the case will be remanded for an appropriate decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 1, 2009 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 3, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> The Office issued a decision dated October 27, 2009 with respect to the overpayment. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions that change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990).