

as to her income and expenses.² The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a letter dated June 19, 2009, the Office requested that appellant complete an overpayment recovery questionnaire (OWCP-20), and submit supporting documentation including bank statements, mortgage statements, utility bills and other relevant documents. On July 21, 2009 appellant submitted an OWCP-20 dated July 13, 2009. With respect to income, she reported zero (0) income from any source, and also reported no cash or other assets. As to expenses, appellant listed amounts for rent or mortgage, food, utilities and other expenses. The documentation included copies of money orders, payments for funeral and automobile expenses and a credit card statement.

By letter dated August 4, 2009, the Office advised appellant to submit additional evidence, such as utility and mortgage bills, bank statements and information regarding income. Appellant was advised that, if no evidence was received within 30 days, a final decision on waiver would be issued.

In a decision dated December 9, 2009, the Office denied waiver of the overpayment. It found the financial information was not sufficient to establish waiver.

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.³ 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."⁴ 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.

Section 10.436 of the implementing regulations⁵ 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

² The Office had, for example, used the gross income reported on a CA-7, rather than net income.

³ *Robert Atchison*, 41 ECAB 83 (1989).

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

⁵ 20 C.F.R. § 10.436 (1999).

amount as determined [by the Office] from data furnished by the Bureau of Labor Statistics.⁶ 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 \$50.00.⁷

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.⁸

With respect to the submission of the necessary evidence to make a determination on waiver, 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.⁹

ANALYSIS

In order to make a proper determination as to whether recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience, the record must include complete information regarding a claimant’s income and expenses. The information provided by appellant on July 21, 2009 was not an adequate response to the requested financial information from the Office. Appellant claimed no income or assets of any kind, without offering any additional explanation. The documentation provided indicated she was paying some expenses, and she provided no other documentation or explanation regarding these sources of income. The Board finds appellant did not provide the necessary information regarding income.

⁶ 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).

⁷ *Sherry A. Hunt*, 49 ECAB 467 (1998).

⁸ 20 C.F.R. § 10.437.

⁹ *Id.* at § 10.438.

In addition, the Office had requested additional documentation regarding expenses, such as utility bills, mortgage or rent statements and other relevant documents. Appellant did not provide all the requested information. Appellant argues that the death of her husband and other issues has created a huge loss for her and she sent the Office “a lot of paperwork.” But the Office cannot properly calculate whether waiver of the repayment would be appropriate without detailed financial information. The information submitted was insufficient to allow the Office to calculate appellant’s income and expenses. The Board accordingly finds that she did not submit the requested information and under 20 C.F.R. § 10.438(b), waiver may be denied until such information is provided. Detailed financial information could be forwarded to the Office.

CONCLUSION

The Board finds the Office properly denied waiver of the \$2,606.56 overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated December 9, 2009 is affirmed.

Issued: September 15, 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