

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARL N. HANSEN, JR. and DEPARTMENT OF THE TREASURY,  
BUREAU OF ENGRAVING & PRINTING, Washington, D.C.

*Docket No. 97-2133; Submitted on the Record;  
Issued May 5, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying waiver of recovery of an overpayment of compensation to appellant in the amount of \$350.74.

By letter dated September 17, 1996, the Office advised appellant that a preliminary determination had been made that an overpayment of compensation had occurred in his case in the amount of \$350.74 because deductions for basic life insurance were not taken for the period April 10, 1995 to August 17, 1996.<sup>1</sup> It advised that appellant had been determined to be without fault in the creation of the overpayment.

In response to this letter, on September 20, 1996 appellant wrote the Office a check for \$350.74.

By decision dated December 3, 1996, the Office determined that the circumstances of the case did not warrant waiver of recovery of the overpayment. The Office reiterated its finding that appellant was without fault in the creation of the overpayment and it found that appellant had not returned the Form OWCP-20 overpayment financial questionnaire such that the Office did not have a basis upon which to make a determination as to whether the overpayment should be waived because such recovery would defeat the purpose of the Federal Employees Compensation Act. The Office further noted that, as the overpayment had been already paid in full, appellant

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<sup>1</sup> The Board notes that this letter does not constitute a formal final decision, and therefore, its substance is not now before the Board on this appeal; *see* C.F.R. § 501.2(c).

had demonstrated the ability to repay the overpayment. It noted that there was no evidence that recovery caused severe hardship and it denied waiver of recovery of the overpayment.<sup>2</sup>

The Board finds that the Office did not abuse its discretion in denying waiver of recovery of the overpayment.

Where an overpayment of compensation has been made because of an error of fact or law, collection of such compensation shall be waived 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. The waiver of an overpayment of compensation by the Office is a matter that rests within its discretion to be exercised pursuant to statutory guidelines.

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, the first test under 5 U.S.C. § 8129(b) as specified in 20 C.F.R. § 10.322(a) provides as follows:

“General. Recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses. Recovery will defeat the purpose of the Act to the extent that:

(1) The individual from whom recovery is sought needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expenses and

(2) The individual’s assets do not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual’s assets not exempted from recoupment in paragraph (d) of this section. The first \$3,000.00 or more depending on the number of the claimant’s dependents is also exempted from recoupment.”<sup>3</sup>

In *Robert E. Wenzholz*,<sup>4</sup> the Board found that the guidelines for recovery of an overpayment from an individual who is without fault, as set forth in section 10.322(a)(1) and (2) were meant to read conjunctively and that the overpaid individual must meet both conditions to find that recovery of the overpayment should be waived on the basis that it would defeat the purpose of the Act. Consequently, to establish that recovery would defeat the purpose of the

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<sup>2</sup> The Board notes that this decision is the only decision in the case record over which it has jurisdiction. See 20 C.F.R. § 501.3(d)(2).

<sup>3</sup> 20 C.F.R. § 10.322(a).

<sup>4</sup> 38 ECAB 311 (1986).

Act, the facts must show that appellant needs substantially all of his income to meet his current ordinary and necessary living expenses and also that his assets, those which are not exempted, do not exceed a resource base of \$3,000.00 (or \$5,000.00 with a spouse or dependent).

20 C.F.R. § 10.324 of the regulations, provides:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in section 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be entertained until such time as the requested information is furnished.”

In this case, the Office requested that appellant submit an overpayment recovery questionnaire in order to determine whether he was entitled to waiver of recovery of the overpayment on the basis that recovery of the overpayment would defeat the purpose of the Act in providing him with at least a subsistence income. Appellant, however, did not request waiver of recovery of the overpayment and did not complete and return the questionnaire, but instead merely repaid the overpayment in full. As a result, the Office did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of the Act. The Office therefore acted properly in refusing to waive recovery of the overpayment on this ground.

With regard to whether recovery of the overpayment is against “equity and good conscience,” 20 C.F.R. § 10.323 provides as follows:

“(a) Recovery of an overpayment is considered to be against equity and good conscience when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in section 10.322.

“(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual’s present ability to repay the overpayment is not considered.”

Appellant has not alleged, and the evidence does not demonstrate, that he relinquished a valuable right or changed his position for the worse in reliance on the erroneously paid compensation which formed the basis for the overpayment.

As appellant has not shown that recovery would “defeat the purpose of the Act” or would “be against equity and good conscience” the Board finds that the Office properly denied waiver of recovery of the overpayment.<sup>5</sup>

The decision of the Office of Workers’ Compensation Programs dated December 3, 1996 is affirmed.<sup>6</sup>

Dated, Washington, D.C.  
May 5, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> The Board notes that neither the fact of overpayment nor the amount of the overpayment were raised on the instant appeal.

<sup>6</sup> Appellant submitted new argument to the Board after the Office issued its December 3, 1996 decision denying waiver of recovery of overpayment, claiming that the overpayment determination was incorrect, and requesting reimbursement of the \$350.74 he had repaid. The Board may not consider this new argument in its review of appellant’s case on appeal. Pursuant to its *Rules of Procedure*, the Board’s jurisdiction is limited to that evidence which was before the Office at the time it rendered the final decision. 20 C.F.R. § 501.2(c).