

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELVIS L. PATTON and DEPARTMENT OF THE AIR FORCE,  
TINKER AIR FORCE BASE, OK

*Docket No. 98-1645; Submitted on the Record;  
Issued February 23, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment occurred in the amount of \$300.00; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly recovered the overpayment by withholding the amount from appellant's continuing compensation.

On April 15, 1996 appellant, then a 49-year-old jet engine mechanic inspector, filed an occupational disease claim alleging that he sustained a lower back condition in the performance of duty. The Office accepted the claim for a herniated disc at L4-5, L5-S1. Appellant retired on June 27, 1997.

On February 13, 1998 the Office made a preliminary determination that an overpayment of compensation occurred in appellant's case in the amount of \$300.00 because the Office did not deduct for postretirement basic life insurance at 50 percent reduction from June 27, 1997 through January 31, 1998. The Office advised appellant that a finding had been made that he was without fault in the creation of the overpayment. Appellant was also advised of his right to submit additional medical evidence, request a review of the written record or a recoupment hearing. He was given 30 days to request a waiver of the overpayment and provide his financial information pursuant to an overpayment recovery questionnaire.

In a decision dated April 1, 1998, the Office determined that the circumstances of appellant's case did not warrant waiver of the recovery of overpayment. The Office informed appellant that recoupment of the overpayment would be made by monthly deductions from his continuing compensation.<sup>1</sup>

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<sup>1</sup> An attached Form EN-2225 stated that the Office would withhold \$100.00 per month for 3 months and \$8.34 in the fourth month from appellant's compensation beginning March 1998 in order to recoup the \$307.00 overpayment plus \$1.34 in interest.

The Board finds that appellant received an overpayment in the amount of \$300.00.

The record supports the Office's determination that appellant elected to receive postretirement basic life insurance at 50 percent reduction but that such payments were not withheld from appellant's monthly compensation benefits during the period June 27, 1997 to January 31, 1998.<sup>2</sup>

The Board also finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment.

Section 8129(a) of the Federal Employees' Compensation Act<sup>3</sup> provides that when an overpayment of compensation is 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 the individual is entitled. Section 8129(b) provides the only exception to this mandatory adjustment:

“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 this subchapter or would be against equity and good conscience.”<sup>4</sup>

Because the Office found appellant to be without fault in the matter of the \$300.00 overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it is determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.322 of the Office regulations provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual 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 ordinary and necessary living expenses; and (2) the individual's assets, those which are not exempt from recovery, do not exceed a resource base of \$3,000.00 (or \$5,000.00 if the individual has a spouse or one dependent, plus \$600.00 for each additional dependent).<sup>5</sup>

Section 10.323 of the Office regulations provides that recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial

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<sup>2</sup> The Office determined that postretirement and basic life insurance deductions at a rate of \$17.85 per week for 219 weeks equaled \$279.22. The Office added on an additional \$27.78 for “Class M” deductions to reach the total of \$307.00 (\$279.00 + \$27.78).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8129(b).

<sup>5</sup> See 20 C.F.R. § 10.322(a)(1)-(2).

hardship, as when an individual, in reliance on such payments or notice that such payments would be made, relinquished a valuable right or changed his or her position for the worse.<sup>6</sup>

In the instant case, appellant failed to complete the overpayment recovery questionnaire as directed by the Office's February 23, 1998 letter.<sup>7</sup> Without an accurate and complete breakdown of appellant's monthly expenses and assets, supported by financial documentation, the Office was not able to calculate whether monthly income exceeds monthly expenses by more than \$50.00 or whether assets exceed the specified resource base. There was also no information of record from which to conclude that appellant would be under severe financial hardship if recovery was sought because he had relinquished a valuable right or changed his position for the worse.

Whether to waive recovery of an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines. As the evidence in this case fails to support that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion by denying waiver of recovery.

The Board additionally finds that the Office properly recovered the overpayment by withholding the amount from appellant's continuing compensation.

As noted above, the Office's regulations provide that, in the case of an overpayment to an individual entitled to further compensation, proper adjustment will be made by reducing subsequent payments having due regard to the financial and other factors involved. In this case, appellant failed to submit any financial information to the Office as requested. The Office reasonably determined to withhold \$100.00 per month for 3 months and \$8.34 in the fourth month from appellant's compensation beginning March 1998 in order to recoup the \$307.00 overpayment plus \$1.34 in interest. The Board finds that the Office did not abuse its discretion in making this determination.

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<sup>6</sup> See 20 C.F.R. § 10.323(a) and (b); *Richard S. Gumper*, 43 ECAB 811 (1992).

<sup>7</sup> In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information as described in § 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 request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished. 20 C.F.R. § 10.324.

The decision of the Office of Workers' Compensation Programs dated April 1, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 23, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member