

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIA P. RENNEY and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 00-50; Submitted on the Record;  
Issued July 10, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$1,951.76; (2) whether the Office abused its discretion in denying waiver of recovery of the overpayment; and (3) whether the Office properly required recovery by deducting \$50.00 every four weeks from appellant's continuing compensation benefits.

The Office accepted that, on September 1, 1982, appellant, then a 39-year-old letter sorting machine operator, sustained bilateral carpal tunnel syndrome. Appellant underwent carpal tunnel surgeries in 1986 and 1988 and thereafter received compensation for temporary total disability.

A loss of wage-earning capacity determination was made after appellant returned to work with the employing establishment for four hours per day and she worked until March 3, 1998.<sup>1</sup> As of March 29, 1998 the employing establishment could no longer accommodate her restrictions and she returned to temporary total disability status as of March 29, 1998. The Office erroneously failed to make deductions, for health and life insurance premiums from appellant's continuing compensation benefits beginning March 29, 1998 through April 24, 1999. The Office calculated an overpayment in the amount of \$1,951.76 based on the failure to deduct \$1,237.76 for health insurance premiums and \$714.00 in life insurance premiums.

On June 15, 1999 the Office issued a preliminary determination that an overpayment of compensation had occurred based on the failure to deduct health and life insurance premiums from appellant's continuing compensation benefits for the period March 29, 1998 through April 24, 1999. The Office calculated that an overpayment of \$1,951.76 had occurred,

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<sup>1</sup> Appellant was paid from March 1 through 28, 1998 in two separately calculated payments that included her WEC rate from March 1 through 3, 1998 and her TTD rate from March 4 through 28, 1998 with appropriate HBI and OLI deductions made.

representing \$1,237.76 for health insurance premiums and \$714.00 in life insurance premiums. The Office advised appellant that she was found to be without fault in the creation of the overpayment and that she could apply for waiver of the overpayment, if it could be shown that recovery would be against equity and good conscience or defeat the purpose of the Federal Employees' Compensation Act.

An overpayment recovery questionnaire was completed by appellant on June 19, 1999 indicating that she had income only from her compensation benefits and had no assets, cash on hand, savings or money in a checking account. Appellant indicated that there were two people in her household, that she paid \$738.00 per month rent, \$100.00 per month for food, \$100.00 per month for clothing, \$65.00 per month for utilities, \$50.00 per month for home maintenance, \$100.00 per month for a telephone, \$230.55 for an auto loan with \$276.28 per month combined costs for gas, oil, maintenance and insurance, \$20.00 for unreimbursed medical expenses, \$223.93 for life insurance and \$69.00 per month for cable television. These debts totaled \$1,903.76 without including the cable costs. She requested waiver of the overpayment and she also requested a telephone conference with the district Office.

On July 9, 1999 an overpayment conference was held during which the Office clarified appellant's income and assets. The Office determined that appellant had monthly income of \$2,031.42 plus \$500.00 per month contributed to the household by her son and that her monthly expenses were \$150.00 for food, \$738.00 for rent, \$80.00 for clothes, \$50.00 for gas, \$38.00 for electricity, \$15.00 for maintenance and \$223.93 for insurance. The Office noted that it had advised her that this data revealed that she had \$115.66 more per month in assets than expenses, leaving approximately this amount available for repayment of the overpayment. The Office found that appellant's monthly income exceeded her monthly expenses by more than \$50.00 and determined that overpayment could be recovered with the least amount of hardship to appellant by withholding \$50.00 every 28 days from her continuing compensation benefits. A memorandum of the conference that date was sent to appellant for any comments as to its accuracy, to be submitted within 15 days. No response from appellant was forthcoming.

By decision dated August 2, 1999, the Office finalized its overpayment determination and advised that the overpayment would be collected by withholding \$50.00 every 28 days from appellant's continuing compensation benefits.

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,951.76 due to the failure to deduct health insurance and life insurance premiums from her compensation for the period March 29, 1998 through April 24, 1999. The amount of the unpaid premiums totaled \$1,951.76. Therefore, the recorded supports that appellant received an overpayment of compensation in that amount.

The Board finds that the Office properly denied waiver of recovery of the overpayment.

Section 8129 of the Act<sup>2</sup> provides that an overpayment of compensation must be recovered unless "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

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<sup>2</sup> 5 U.S.C. § 8129.

good conscience. Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>3</sup>

Section 10.436(a) and (b) of the implementing regulations<sup>4</sup> provides that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary if:

“(a) the beneficiary from whom the Office seeks recovery needs substantially all of his 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. A higher amount is specified for a beneficiary with one or more dependents.”

The Board has held that subsections (a) and (b) of § 10.436 are meant to be read conjunctively and that a claimant must meet both conditions before recovery will defeat the purpose of the Act.<sup>5</sup> Consequently, to establish that recovery would defeat the purpose of the Act. A claimant must show that she needs substantially all of her income to meet current and ordinary living expenses and also that her assets do not exceed the applicable resource base.

In this case, the Office found that appellant was without fault in the creation of the overpayment of compensation. The Office proceeded to determine whether recovery of the overpayment would defeat the purpose of the Act. Under these circumstances, the Board notes that recovery of this overpayment will not defeat the purpose of the Act because the evidence does not establish that financial hardship would occur considering both under both subsections (a) and (b) of 20 C.F.R. § 10.436. Upon evaluating the evidence following the telephone conference, the Office found that appellant’s necessary monthly income exceeded her monthly expenses by \$115.66. The evidence, therefore, fails to establish that any hardship would result under the applicable subsections. Appellant has not demonstrated that recovery would defeat the purpose of the Act under clause (a), as is required for waiver.

With respect to whether recovery would be against equity and good conscience, section 10.437(a) of the implementing regulations provides that “[r]ecovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.” Section (b) continues: “Recovery of an overpayment is also considered to be against equity and good conscience when any 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.”

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<sup>3</sup> See *James M. Albers, Jr.*, 36 ECAB 340 (1984).

<sup>4</sup> 20 C.F.R. § 10.436(a) and (b); see also Federal (FECA) Procedure Manual, Part 6 -- Debt Management; *Initial Overpayment Actions*, Chapter 6.0200.1(a) and (b) (September 1994).

<sup>5</sup> See, e.g., *William Phillips, Jr.*, 39 ECAB 330 (1987).

In this case, appellant has not alleged that she would experience severe financial hardship in attempting to repay the debt, or that she gave up any valuable right or changed her position for the worse in reliance on the receipt of the improper payments. Appellant has not shown that recovery would “defeat the purpose of the Act” or would “be against equity and good conscience” and the Board finds that the Office properly denied waiver of recovery of the overpayment.

The Board also finds that the Office properly required repayment by withholding \$50.00 from appellant’s monthly continuing compensation.

The Office’s implementing regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, ... the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.”<sup>6</sup>

The Office considered the above-noted factors and found that the record established that appellant has \$115.66 in monthly income, which was not needed for her ordinary and necessary living expenses plus \$50.00. An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. The amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses, *i.e.*, ordinary and necessary living expenses plus \$50.00.<sup>7</sup> The hearing representative carefully evaluated the financial information of record regarding appellant’s income and expenses, which established a monthly surplus and determined that appellant resources adequate to enable her to repay the debt by having \$50.00 per month deducted from her continuing compensation benefits. The Board finds that the Office did not abuse its discretion in deciding to withhold \$50.00 per month from appellant’s continuing compensation in order to facilitate recovery of the overpayment.

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<sup>6</sup> 20 C.F.R. § 10.441(a); *see, e.g., Roger Seay*, 39 ECAB 441 (1988).

<sup>7</sup> *See Carroll R. Davis*, 46 ECAB 361 (1994).

The August 2, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 10, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member