

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID L. LEIDIG and DEPARTMENT OF THE ARMY,
LETTERKENNY ARMY DEPOT, Chambersburg, PA

*Docket No. 01-425; Submitted on the Record;
Issued September 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying waiver of recovery of a \$39,779.47 overpayment in compensation.

By decision dated September 12, 1984, the Office awarded appellant a 43 percent impairment rating based on bilateral hearing loss. On July 26, 1995 appellant filed a claim for additional hearing loss. By decision dated January 19, 1996, the Office awarded appellant a 47 percent impairment rating based on hearing loss in both ears.

By letter dated November 19, 1999, the Office advised appellant that it had made a preliminary finding that he had been overpaid benefits in the amount of \$39,779.47 because he had received "two schedule awards for the same impairment." The Office noted that appellant had received a schedule award for 43 percent for bilateral hearing loss, and that based on a second claim he should have received an additional award of 4 percent. However, the Office awarded appellant an award of 47 percent for bilateral hearing loss. The Office found that appellant was without fault in the creation of the overpayment and advised him how to apply for a waiver of his obligation to repay the overpayment.

In a letter dated December 13, 1999, appellant requested that the overpayment be waived. By decision dated February 4, 2000, the Office determined that appellant was not entitled to waiver of the overpayment in the amount of \$39,779.47.

The Board finds that the Office acted within its discretion in finding that recovery of the overpayment would not defeat the purpose of the Federal Employees' Compensation Act.¹

Section 8129(a) of the Act provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations

¹ 5 U.S.C. §§ 8101-8193.

prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled. Section 8129(b) describes the only exception to the Office's right to adjust later payments or recover overpaid compensation:

“Adjustment or recovery 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.”²

The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.436 and 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 of Title 20 of the Code of Federal Regulations provides that recovery of an overpayment will defeat the purpose of the Act if:

“(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] as determined from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.”³

Section 10.437 of Title 20 of the Code of Federal Regulations provides that recovery of an overpayment would be considered to be against equity and good conscience if any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.⁴

The Office's procedure manual states that recovery would cause hardship if:

“(a) The individual from whom recovery is sought needs substantially all of his or her current income (including FECA monthly benefits) to meet current ordinary and necessary living expenses, and

“(b) The individual's assets do not exceed the 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....”⁵

² *Id.* at section 8129(d).

³ 20 C.F.R. § 10.436.

⁴ 20 C.F.R. § 10.437.

⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1) (September 1994).

In this case, appellant listed monthly expenses of \$612.00 and a monthly income of \$1,720.75. In addition, appellant noted that the value of his funds was \$51,629.22 and that he owned a time-share property in South Carolina.⁶ Since appellant's monthly income exceeded his expenses by \$1,110.00, he did not need essentially all of his monthly income to meet his expenses. The financial information submitted by appellant therefore showed that he did not meet the financial criteria under which the Office would consider waiver of recovery of the overpayment on the grounds that recovery would defeat the purpose of the Act.⁷

The decision of the Office of Workers' Compensation Programs dated February 4, 2000 is hereby affirmed.⁸

Dated, Washington, DC
September 24, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ Appellant listed \$23,300.53 in savings accounts and \$26,296.85 in other accounts.

⁷ See *Richard S. Gumper*, 43 ECAB 811 (1992).

⁸ The Board notes that this case record contains evidence which was submitted subsequent to the Office's February 4, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).