



## **FACTUAL HISTORY**

On May 30, 2001 appellant, then a 33-year-old mail handler, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome in her right wrist as a result of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on July 25, 2002 and a left carpal tunnel release on August 27, 2002. She was paid compensation and medical benefits.

On November 5, 2004 the Office made a preliminary determination that appellant received an overpayment in the amount of \$2,840.33 from June 1 through August 2, 2001. The Office noted that the duration of appellant's workweek was input incorrectly and that this resulted in the overpayment. The Office determined that appellant was without fault in the creation of the overpayment and requested that she submit financial information and state whether she wanted a hearing or requested a waiver of the overpayment. On November 8, 2004 appellant requested a hearing. By memorandum of the same date, appellant asked for waiver of the overpayment. She noted that the mistake was made by the Office in 2001 and was only recently discovered, that she was behind on her bills and that the error was not her fault.

At the hearing held on July 14, 2005, appellant noted that she had been off work since January and that her only income was workers' compensation related to a December 7, 2004 injury.<sup>1</sup> She acknowledged receiving three payments under that claim totaling \$12,925.48 by payments made in May, June and July 2005. Subsequent to the hearing, appellant filed financial documents. She indicated that her monthly income was workers' compensation of \$2,700.00 per month. Appellant listed her monthly expenses as: food \$200.00, clothing \$150.00 to 250.00, rent \$125.00, utilities \$100.00, telephone \$90.00, automobile insurance \$175.00, gas and oil for automobile \$200.00, maintenance of automobile \$150.00, Sprint \$75.00 and "female items" \$150.00. She listed payments on her debts as Visa \$100.00, Carson \$50.00, Capital One \$50.00 and Peoples Gas \$50.00. Appellant listed her assets as \$500.00 in her credit union account. She attached copies of various bills, receipts and other documents related to her expenses.

In a decision dated November 21, 2005, the Office hearing representative found that appellant received an overpayment in the amount of \$2,840.33, that she was without fault in the creation of the overpayment but denied waiver. The overpayment would be recovered by deducting \$85.00 every four weeks from her compensation payments under file number 10-2039675.

## **LEGAL PRECEDENT -- ISSUE 1**

Section 8129(a) of the Federal Employees' Compensation Act provides, in pertinent part:

"When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations

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<sup>1</sup> File No. 10-2039675. Appellant filed a claim for a December 7, 2004 injury to her shoulders, accepted for bilateral impingement syndrome.

prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

The records establishes that appellant received an overpayment of compensation as the Office incorrectly entered information pertaining to her workweek. Appellant’s benefits for the period from June 1 to August 2, 2001 should have been computed as follows:

“(\$765.08 weekly pay rate) x (3/4 compensation rate) x (162 hours payable) x (1 week/40 hours) = \$2,323.93.”

However, appellant received \$5,164.26 for this time period. The difference between the amount appellant received (\$5,164.26) and the amount she should have received (\$2,323.93) resulted in an overpayment of \$2,840.33. The Office properly determined that appellant received an overpayment for which she was not at fault.

### **LEGAL PRECEDENT -- ISSUE 2**

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.<sup>3</sup> The statutory guidelines are found in section 8129(b) of the Act which states: “Adjustment recovery [of an overpayment] by the United States may not be made when [an] 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.”<sup>4</sup>

Section 10.436 of the implementing regulation<sup>5</sup> provides that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship in a currently or formerly entitled beneficiary because: the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or 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.<sup>6</sup> An individual is deemed to need substantially all of his or her income to meet current

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<sup>2</sup> 5 U.S.C. § 8129.

<sup>3</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>4</sup> See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

<sup>5</sup> 20 C.F.R. § 10.436.

<sup>6</sup> An individual’s assets must exceed a resource based on \$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 based includes all of the individual’s assets not exempt from recoupment. See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.6(a)(1)(b) (December 23, 2004).

ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>7</sup>

Section 10.437 provides that recovery of an overpayment is considered against equity and good conscience when an individual who received an overpayment would experience severe financial hardship 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In the instant case, appellant was found without fault in the creation of the overpayment. The Office hearing representative reviewed appellant's assets and reported monthly income and expenses. The hearing representative determined that appellant had a current monthly income of \$2,700.00 with expenses of \$1,975.00. She noted that appellant was only able to provide documentation for a portion of the almost \$13,000.00 in benefits she had received in 2005 and that appellant had over \$3,000.00 remaining from those payments. As appellant's monthly income exceeded her expenses by \$725.00, the hearing representative determined that she was not entitled to waiver. The hearing representative's finding that appellant was not entitled to waiver of overpayment was reasonable. Appellant has not shown that she needs all her income to meet her current living expenses. She has not established that she detrimentally relied on the overpayment or gave up a valuable right or changed her position for the worse.<sup>9</sup> Accordingly, the Office properly denied waiver.

### **LEGAL PRECEDENT -- ISSUE 3**

The Office's implementing federal regulations at section 10.441 provide that, whenever an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, 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 hardship.<sup>10</sup>

### **ANALYSIS -- ISSUE 3**

In determining that deductions of \$85.00 should be made every four weeks from appellant's continuing compensation payments, the hearing representative determined that appellant had excess monthly income to make repayment of the overpayment. Appellant's current monthly income from her compensation was \$2,700.00 per month and her expenses of

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<sup>7</sup> See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

<sup>8</sup> 20 C.F.R. § 10.437.

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.441(a) (2006).

\$1,975.00 per month resulted in an excess of \$725.00 per month. The Office properly determined that appellant was capable of making payments of \$85.00 every four weeks without incurring undue hardship. Appellant is in receipt of compensation from the Office. The hearing representative did not abuse her discretion by deducting \$85.00 every four weeks from appellant's continuing compensation payments.<sup>11</sup>

**CONCLUSION**

The Office properly determined that appellant received an overpayment of compensation in the amount of \$2,840.33. It properly denied waiver of the overpayment and directed recovery of \$85.00 every four weeks from appellant's continuing compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 21, 2005 is affirmed.

Issued: December 1, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *Id.*