

**United States Department of Labor
Employees' Compensation Appeals Board**

M.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Suwannee, GA, Employer**

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**Docket No. 08-516
Issued: July 15, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2007 appellant filed a timely appeal from a September 14, 2007 decision of the Office of Workers' Compensation Programs, denying waiver of recovery of an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied waiver of recovery of a \$4,247.99 overpayment of compensation.

FACTUAL HISTORY

On May 23, 2003 appellant, then a 63-year-old rural carrier associate, filed a traumatic injury claim for a back injury that occurred on May 16, 2003 when he lifted a fully loaded tray of mail from his cart to the rear of his vehicle. The Office accepted his claim for a lumbar strain and coccyx contusion. Effective July 13, 2003 appellant was placed on the periodic

compensation rolls to receive compensation for temporary total disability. He returned to limited duty on September 26, 2003 and to full duty on March 1, 2004.

On May 31, 2007 the Office advised appellant of its preliminary determination that there was an overpayment of compensation in the amount of \$4,247.99 because he had returned to work on September 24, 2003 but continued to receive compensation benefits on the periodic compensation rolls through March 20, 2004.¹ The Office made a preliminary determination that appellant was without fault in the creation of the overpayment. Appellant was advised to submit evidence or argument if he disagreed with the fact or amount of the overpayment or if he wished to request a waiver of recovery of the overpayment. The Office asked appellant to submit a completed copy of an enclosed overpayment recovery questionnaire and attach supporting financial documentation of income and expenses, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records which supported the income and expenses listed. The Office would review the financial documentation and, if appellant was unable to pay the full amount, the Office could determine a fair repayment method. The Office advised that, if he did not reply within 30 days, it would issue a final decision based on the information of record.

On June 18, 2007 appellant requested a telephone conference on the issue of waiver. He submitted a completed overpayment recovery questionnaire showing that he had monthly income of \$1,052.00, including \$812.00 in social security payments and \$240.00 from a state retirement system. Appellant claimed monthly expenses of \$2,519.00, including \$912.00 for his mortgage, \$560.00 for food, \$50.00 for clothing, \$110.00 for medication, \$165.00 for utilities, a car payment of \$336.00 and a bank loan payment of \$386.00. He indicated that he supported his granddaughter. Appellant claimed assets of \$8,600.00 for unspecified personal property and other funds.

On August 22, 2007 a telephone conference was held between appellant and an Office senior claims examiner. In a letter of that date, the claims examiner advised him to review the memorandum of the conference and, if he felt there were any inaccuracies, submit a written response detailing the inaccuracies within 15 days. There was no response. The August 22, 2007 telephone conference memorandum reflected that appellant claimed \$3,920.00 in monthly income.² He had assets of \$10.00 cash and \$110.00 in a checking account. Monthly expenses totaled \$3,155.83, including a mortgage payment of \$912.00, city property tax of \$28.33, \$560.00 for food, \$100.00 for clothing, \$120.00 for electricity, \$100.00 for heating oil, \$85.00 for water and sewer and refuse collection, \$86.00 for telephone/internet, \$65.00 for his Verizon cell phone, \$50.00 for another telephone bill, \$75.00 for cable television, \$100.00 for medication, \$30.00 for doctor visit copayments, \$346.00 for a car loan, \$386.00 for a bank loan, \$12.50 for lawn care and \$100.00 in family vehicle expenses. Appellant stated that he was not

¹ The record contains copies of disability payment reports and overpayment worksheets showing that appellant received \$4,247.99 from September 25, 2003 to March 20, 2004. He returned his compensation check for the period January 25 to February 21, 2004. Appellant received \$4,247.99 for the remainder of the period September 25, 2003 to March 20, 2004.

² Appellant included \$2,840 from his wife's pay as a teacher. This portion of his household income was not included earlier in his overpayment recovery questionnaire.

currently making any payments on a balance of \$860.00 owed to Verizon, no payments to Eckard Drugs on a balance of \$410.00 and no payments to Cleveland Drug on a \$400.00 balance because he could not afford to make these payments. He indicated that in three months a \$22,000.00 bank loan, cosigned by his brother, was due in full. The senior claims examiner advised appellant that he needed to provide, within 15 days, supporting financial documentation such as copies of income tax returns, bank account statements, bills and cancelled checks, pay slips and any other records that supported his income and expenses. Failure to provide supporting documentation would result in denial of waiver.

By decision dated September 14, 2007, the Office advised appellant of its determination that waiver of recovery of the \$4,247.99 overpayment of compensation was not warranted by the evidence of record. The Office noted that the only documentation submitted by appellant was a promissory note dated August 26, 2007. This document was not prepared on any bank letterhead and there was no other indication of its authenticity. The claims examiner determined that appellant's claimed monthly income of \$3,920.00 exceeded his claimed monthly expenses of \$3,155.83 by more than \$50.00 (it exceeded by \$764.17). The claims examiner found that the circumstances in appellant's case did not warrant waiver of recovery of the overpayment. Appellant was instructed to submit \$100.00 each month until the overpayment was recovered.³

LEGAL PRECEDENT

Under section 8129 of the Federal Employees' Compensation Act and the implementing regulations, an overpayment 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 good conscience.⁴ Section 10.433 of the implementing regulations provides that the Office may consider waiving an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁵ Section 10.434 provides that, if the Office finds the recipient of an overpayment was not at fault, repayment will be required unless:

“(a) Adjustment or recovery of the overpayment would defeat the purpose of the [Act], or

³ Subsequent to the September 14, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁴ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

⁵ 20 C.F.R. § 10.433(a).

“(b) Adjustment or recovery of the overpayment would be against equity and good conscience.”⁶

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purpose of the Act if the beneficiary needs substantially all of his current income to meet current ordinary and necessary living expenses and the beneficiary’s assets do not exceed a specified amount as determined by the Office. Section 10.437 provides that a recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when any individual in reliance in such payments gives up a valuable right or changes his or her position for the worse.⁷

The individual who received the overpayment is responsible for providing information concerning income, expenses and assets as specified by the Office.⁸ This information is needed to determine whether recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience.⁹ This information will also be used to determine the repayment schedule, if necessary.¹⁰ Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is provided.¹¹

ANALYSIS

The record establishes that appellant received a \$4,247.99 overpayment of compensation because he had returned to work on September 25, 2003 but continued to receive wage-loss compensation through March 20, 2004. He does not dispute the fact or the amount of the overpayment.

Although appellant was without fault in creating the \$4,247.99 overpayment that arose from September 25, 2003 to March 20, 2004, he nonetheless bears responsibility for providing

⁶ 20 C.F.R. § 10.434. Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (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 from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents. *Id.* at § 10.436. Recovery 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. *Id.* at § 10.437(a). 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. *Id.* at § 10.437(b).

⁷ 20 C.F.R. § 10.437.

⁸ 20 C.F.R. § 10.438(a).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.438(b).

the financial information necessary to support his request for waiver.¹² He submitted a completed overpayment recovery questionnaire but failed to provide supporting financial documents such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records supporting the income and expenses listed, as requested by the Office. The Office explained that this information was necessary to consider the question of waiver and to determine a reasonable method for collection and the Office properly explained that failure to submit the requested information within 30 days would result in the denial of waiver.¹³ Because appellant failed to submit the requested financial documentation, he left the Office no choice but to deny his request for waiver.¹⁴ The Board will affirm the Office's September 14, 2007 decision on the issue of waiver.¹⁵

On appeal, appellant contends that it would be a hardship for him to repay the overpayment. He asserts that he submitted financial documentation of his monthly expenses to the Office, including copies of bank account records and monthly bills and that the monthly expenses of \$3,155.83 stated in the September 14, 2007 decision should have included a \$1,000.00 monthly payment for a bank loan. However, as noted, the only financial documentation of record is the promissory note dated August 26, 2007 which was not authenticated. The evidence before the Office at the time of its September 14, 2007 decision did not meet the criteria for consideration of waiver under the Act and the implementing regulations.

CONCLUSION

The Board finds that the Office properly denied waiver of recovery of the \$4,247.99 overpayment.

¹² *Madelyn Y. Grant*, 57 ECAB 533 (2006).

¹³ Appellant was afforded 30 days in which to provide financial documentation following the May 31, 2007 preliminary overpayment determination and 15 days following the August 22, 2007 telephone conference.

¹⁴ See text accompanying note 6.

¹⁵ See *Madelyn Y. Grant*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2007 is affirmed.

Issued: July 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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