

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 52
LONDON, KY 40742-8300
Phone: (202) 693-0045

May 11, 2006

Date of Injury: 04/07/1963
Employee:

Preliminary Determination

Dear Mr.:

The Office of Workers' Compensation Programs (OWCP) has made a preliminary determination that you have been overpaid benefits in the amount of \$ because . This Office has found that you were without fault in creating the overpayment. If you disagree with the fact or the amount of the overpayment, you have a right to submit new evidence in support of your belief. The attached memorandum fully explains the basis for this preliminary finding.

If you agree that you were overpaid this amount, you may send a check or money order for the full amount to the address shown below. Make the check payable to the U.S. Department of Labor, OWCP, and include your FECA file number on the check.

U.S. Dept. of Labor
DFEC National Office
P.O. Box 403356
Atlanta, GA 30384-3356

If you are unable to pay the full amount now, submit a completed form OWCP-20 (enclosed) so that we may determine a fair repayment method.

If you disagree with this preliminary overpayment finding, you may contest it. You have the right to submit evidence or arguments which you believe will affect these preliminary findings if:

1. You disagree that the overpayment occurred;
2. You disagree with the amount of the overpayment; or
3. You believe that OWCP should waive recovery of the overpayment and request a waiver.

When the claimant is without fault in creating an overpayment, the law at 20 C.F.R. 10.434 states that OWCP may not recover the overpayment if the recovery would either 1) defeat the purpose of the Federal Employees' Compensation Act (FECA), which is to provide at least a basic income for beneficiaries (20 C.F.R. 10.436), or 2) the recovery would be against equity and good conscience (20 C.F.R. 10.437).

Recovery would be against equity and good conscience when:

1. A claimant, acting on incorrect information from OWCP, gives up a valuable right; or

2. A claimant, acting on incorrect information from OWCP, spends or commits funds in ways which he or she otherwise would not have done, and suffers a financial loss as a result; or
3. A claimant would suffer severe financial hardship in trying to repay the debt.

Collection of the overpayment will be pursued after the final decision is issued.

ACTIONS YOU MAY TAKE

You may take any **one** of the following actions by completing the attached "Overpayment Action Request" and Form OWCP-20 and mailing it to the appropriate address within 30 days:

1. **Request a telephone conference with the district office.** Send your written request to the address listed in the letterhead along with completed form OWCP-20 and supporting documents. We will then contact you to arrange a convenient time for the conference, allowing enough time for you to prepare. Include any supporting evidence or arguments with your written request.
2. **Request that the district office issue a final decision** based on the written evidence only. Send your written request to the address listed in the letterhead along with completed form OWCP-20 and supporting documents.
3. **Request a pre-recoupment hearing before a representative of the Branch of Hearings and Review** by sending your written request (marked "Overpayment Hearing Request" on the envelope) along with completed form OWCP-20 and any supporting evidence within 30 days, to:

Branch of Hearings and Review
Office of Workers' Compensation Programs
P.O. Box 37117
Washington, D.C. 20013-7117

The hearing will be held at a time and place convenient to you. You may have a representative present at the hearing, and you should be prepared to present any new evidence or arguments to dispute the occurrence or amount of the overpayment and/or support your belief that you are without fault in creating the overpayment and that the overpayment should be waived.

OWCP-20:

In order for OWCP to consider the question of waiver or to determine a reasonable method for collection, you must complete and submit the enclosed Form OWCP-20. Attach supporting documents to Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support the income and expenses listed. Under 20 CFR 10.438, failure to submit the requested information within 30 days will result in the denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

If you have any questions or require any assistance in responding to this letter, please contact the district office. If we do not receive a reply from you within 30 days of the date of this letter, we will issue a final decision based on the information in file.

Sincerely,

Michelle Walker

Enclosures: Memorandum for the File, Form OWCP-20

US DEPT OF COMMERCE
OHRM OLER RM H1624
WORKERS COMPENSATION BRANCH
14TH AND CONSTITUTION AVE NW
WASHINGTON, DC 20230

HENRY M. EMERICK, JR

OVERPAYMENT ACTION REQUEST

PART 1:

You may choose only **one** option. Your request must be submitted to the appropriate address within 30 days of the date of this letter.

____ **I request a telephone conference with the District Office** on the issues of fault and possible waiver of this overpayment. My completed OWCP-20 and supporting financial documents are enclosed. If you checked this option, mail this request to our London, KY address.

____ **I request that the District Office make a decision based on the written evidence** on the issues of fault and possible waiver of this overpayment. My completed OWCP-20 and supporting financial documents are enclosed. If you checked this option, mail this request to our London, KY address.

____ **I request a pre-recoupment hearing on the issues of fault and a possible waiver of this overpayment with the Branch of Hearings and Review.** My completed OWCP-20 and supporting financial documents are enclosed. Depending on your geographical location and the number of hearing requests in your area, we may be able to expedite your appeal by offering you a telephone hearing at the discretion of the hearing representative. **If OWCP deems your case suitable for teleconference and you are open to this option, please check here.** _____

Please write "Overpayment Hearing Request" on the envelope and mail this request directly to the Branch of Hearings and Review at the following address:

**Branch of Hearings and Review
Office of Workers' Compensation Programs
P.O. Box 37117
Washington, D.C. 20013-7117**

PART 2:

I WISH TO CONTEST THIS OVERPAYMENT BECAUSE:

(Check as many as apply. Please explain, in detail, why you are challenging this overpayment.)

____ I disagree that the overpayment occurred.

____ I disagree with the amount of the overpayment.

____ I believe the overpayment occurred through no fault of my own and request a waiver.

Explain: _____

File Number: 250281977
opprelimnofault-NO-0

Signed _____ Date: _____

HENRY M. EMERICK, JR

MEMORANDUM FOR THE FILE

ISSUE: The issue for determination is whether the claimant was overpaid compensation for the period to in the amount of \$ and whether or not the claimant was at fault in the creation of the overpayment.

BACKGROUND:

CALCULATION OF OVERPAYMENT:

BASIS FOR DECISION:

Under Section 10.433 of Title 20 of the Code of Federal Regulations, a recipient will be found with fault with respect to creating an overpayment who:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.

It is recommended that the claimant be found without fault in the creation of the overpayment because the claimant was not aware nor could the claimant reasonably have been expected to know that OWCP had paid compensation incorrectly.

CONCLUSION: We have made a preliminary finding that an overpayment in the amount \$ occurred, covering the period to , and the claimant is found without fault in its creation.

Michelle Walker

May 11, 2006