

§ 30.513 Under what circumstances may OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving recovery of an overpayment only if the recipient was not at fault in accepting or creating the overpayment. Recipients of benefits paid under EEOICPA are responsible for taking all reasonable measures to ensure that payments received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(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. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that a recipient was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the recipient's capacity to realize that he or she is being overpaid.

§ 30.514 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the Act (see § 30.516); or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 30.517).

§ 30.515 Is a recipient responsible for an overpayment that resulted from an error made by OWCP?

(a) The fact that OWCP may have erred in making the overpayment does

not by itself relieve the recipient of the overpayment from liability for repayment if the recipient also was at fault in accepting the overpayment.

(b) However, OWCP may find that the recipient was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The recipient relied on misinformation given in writing by OWCP regarding the interpretation of a pertinent provision or EEOICPA of this part; or

(2) OWCP erred in calculating either the percentage of impairment or wage-loss under Part E of EEOICPA.

§ 30.516 Under what circumstances would recovery of an overpayment defeat the purpose of the Act?

Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to the recipient because:

(a) The recipient from whom OWCP seeks recovery needs substantially all of his or her current income to meet current ordinary and necessary living expenses; and

(b) The recipient's assets do not exceed two months' expenditures as determined by OWCP using the Bureau of Labor Statistics Consumer Expenditure Survey tables.

§ 30.517 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when the recipient would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when the recipient, 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. In making such a decision, OWCP does not consider the recipient's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and

§ 30.518

that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that a recipient's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 30.518 Can OWCP require the recipient of the overpayment to submit additional financial information?

(a) The recipient of the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act, or would be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit this 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 furnished.

§ 30.519 How does OWCP communicate its final decision concerning recovery of an overpayment?

(a) After considering any written documentation or argument submitted to OWCP within the 30-day period set out in § 30.512(d), OWCP will issue a final decision on the overpayment. OWCP will send a copy of the final decision to the individual from whom recovery is sought and his or her representative, if any.

(b) The provisions of subpart D of this part do not apply to any decision regarding the recovery of an overpayment.

§ 30.520 How are overpayments collected?

(a) When an overpayment has been made to a recipient who is entitled to further payments, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is

20 CFR Ch. I (4-1-08 Edition)

called to same. If no refund is made, OWCP shall recover the overpayment by reducing any further lump-sum payments due currently or in the future, taking into account the financial circumstances of the recipient, and any other relevant factors, so as to minimize any hardship. Should the recipient die before collection has been completed, further collection shall be made by decreasing later payments, if any, payable under EEOICPA with respect to the underlying occupational illness or covered illness.

(b) When an overpayment has been made to a recipient and OWCP is unable to recover the overpayment by reducing compensation due currently, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), and may be reported to the Internal Revenue Service as income. If the recipient fails to make such refund, OWCP may recover the overpayment through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart G—Special Provisions

REPRESENTATION

§ 30.600 May a claimant designate a representative?

(a) The claims process under this part is informal, and OWCP acts as an impartial evaluator of the evidence. A claimant need not be represented to file a claim or receive a payment. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as a representative until the claimant withdraws the authorization of the first individual. In