

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 March 2005

In the Matter of:

LEONARD LOTHLEN, SR.,
Petitioner,

Case No.: 2004-DCA-00007

v.

UNITED STATES DEPARTMENT OF
LABOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Respondent.

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On November 23, 2004, Respondent filed a Motion to Dismiss Salary Offset Proceeding, arguing that the Department of Labor's Office of Workers' Compensation Programs (OWCP) has made no attempt to recover a debt in the form of a salary offset under the Debt Collection Act of 1982 (DCA), 5 U.S.C. § 5514, but rather has been collecting an overpayment of compensation benefits through deductions from Petitioner's ongoing Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8100 *et seq.*, and thus Respondent's action is not reviewable by the Office of Administrative Law Judges under section 5 of the DCA. On December 7, 2004, Petitioner requested an extension of time to reply to Respondent's Motion. Petitioner's request for an extension of time was granted on December 21, 2004. Petitioner replied to Respondent's Motion on January 6, 2005, arguing that the claim is in fact governed by the DCA. Respondent replied on February 10, 2005.

Petitioner received FECA benefits after injuring his back while working for the Postal Service on July 9, 1977. The OWCP hearing representative rendered a decision on Petitioner's overpayment on April 1, 1998. The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board (ECAB). 20 C.F.R. § 14.440(b). Petitioner appealed the case to the ECAB. A hearing was held, and Mr. Lothlen testified before the Board. On November 29, 2000, the ECAB issued a decision affirming the hearing representative's determination that an overpayment occurred. *Lothlen v. U.S. Postal Service*, ECAB Docket No. 98-2311 (issued November 29, 2000). Petitioner has now appealed the case to the Office of Administrative Law Judges. The Office of Administrative Law Judges, however, has no jurisdiction to hear such an appeal.

This case does not arise under Section 5 of the Debt Collection Act of 1982, 5 U.S.C. § 5514. It concerns a recovery of an overpayment by OWCP from continuing compensation

benefits pursuant to FECA and its implementing regulations. The ECAB has exclusive jurisdiction over final decisions concerning overpayment of FECA benefits. 20 C.F.R. § 14.440(b). The remedy available to Petitioner to forestall an overpayment is to present evidence to OWCP under 20 C.F.R. § 10.431(d) challenging the fact or Amount of overpayment, challenging the finding of fault, or requesting that the amount be waived. Thus, the Office of Administrative Law Judges has no jurisdiction to review this case. Accordingly,

IT IS ORDERED that Respondent's Motion to Dismiss is granted.

A
Thomas M. Burke
Associate Chief Administrative Law Judge