

Policy and Procedure Name	Overpayment of Compensation
Policy Number	CP-15-04
Ohio Revised Code (ORC) Reference	ORC 4123.511(K) , ORC 4123.56
Ohio Administrative Code (OAC) Reference	OAC 4121-3-32(B)(2) , OAC 4123-3-34 , OAC 4123-3-37
Other Law/Rule References	None
Ohio Industrial Commission (IC) Resolution/Memo Reference	IC/BWC Joint Resolution R89-3-27, <i>Adjudications Before the Ohio Industrial Commission, Memo P3</i>
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Approved by	Ann M. Shannon, Chief of Claims Policy and Support
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I. POLICY PURPOSE

This policy ensures that BWC appropriately declares an overpayment when a claimant receives compensation that they are not entitled to receive.

II. APPLICABILITY

This policy applies to Claims Services staff.

III. DEFINITIONS

Claimant

One who asserts a right, demand, or claim for workers' compensation benefits.

Overpayment of Compensation

A final administrative or judicial determination holding that the claimant received compensation to which they were not entitled, and which entitles BWC or a self-insuring employer to withhold a percentage amount of compensation from any claims, past, present, or future, to which the claimant becomes entitled.

IV. POLICY

A. Identifying an Overpayment

1. Overpayment of compensation may include BWC payments made directly to a claimant.
2. Overpayment of compensation may also include BWC payments made to another entity on the claimant's behalf, including, but not limited to, payments to:
 - a. A child support enforcement agency;
 - b. The Ohio Department of Job and Family Services.

B. Recouping or Not Recouping an Overpayment

1. Except as specified below, BWC will:
 - a. Seek recoupment of an overpayment of compensation until BWC recovers the total amount of the overpayment, regardless of the amount of overpayment or time that has passed since the overpayment occurred; and
 - b. Recoup the overpayment from any amount of compensation to which the claimant becomes entitled in a past, present or future claim, except for the following:
 - i. A lump sum advancement for attorney fees;

- ii. Disabled Workers' Relief Fund payments;
 - iii. Living maintenance payments compensation (not including living maintenance wage loss payments), except in cases of fraud; or
 - iv. The first 12 weeks of temporary total compensation (TT), except for fraud overpayments.
 - 2. BWC will provide notice of its intent to recoup an overpayment via:
 - a. A BWC order; or
 - b. An *Initial Notification of IC Declared Overpayment letter*.
 - 3. BWC will not seek recoupment of any overpayment when:
 - a. The injured worker (IW) received compensation in a claim that is subsequently disallowed by the Court of Appeals or Supreme Court;
 - b. Absent an indication of fraud, a new dependent is identified as being eligible for a portion of the previously paid death benefits and there is evidence that the original dependents accepted benefits in good faith without knowledge of the other dependents;
 - c. The overpayment is caused by a court subsequently overturning an IC violation of specific safety regulation (VSSR) award; or
 - d. The statute of limitations on the claim in which the overpayment occurred expired prior to declaration of the overpayment.
- C. Collection of Overpayments
 - 1. BWC will deduct overpayments from the actual gross award prior to distributing monies to an authorized representative, FSEA or the claimant.
 - 2. The general order of deductions when there is an overpayment is:
 - a. Overpayment;
 - b. If the remaining balance of the award after the overpayment deduction is less than \$150:
 - i. If there is a C-230, BWC will honor it; or
 - ii. The claimant is paid the entire remaining balance;
 - 3. If the remaining balance of the award after the overpayment deduction is equal to or greater than \$150, the lump sum process applies, as outlined above.
 - 4. When collecting overpayments from the claimant for periods of compensation that they were not entitled to receive, BWC will also recoup any payment from that overpaid period of compensation paid directly to FSEA from the claimant. See the [Family Support Orders and Attorney Fees Paid Pursuant to Deductions of Child Support from Lump Sum Payments](#) policy and procedure for more details.

V. PROCEDURE

- A. General Claim Note and Documentation Requirements
 - 1. BWC staff will refer to the [Claim File Contents and Documentation](#) policy and procedure for claim note and documentation requirements; and
 - 2. Must follow any other specific instructions for claim notes and documentation included in this procedure.

- B. Investigation and Processing
 - 1. Claims Services staff may identify an overpayment arising from:
 - a. An IC order;
 - b. A court order that impacts compensation;
 - c. Changes to any of the following (not all-inclusive):
 - i. Compensation period;
 - ii. Full weekly wage (FWW) or average weekly wage (AWW);
 - iii. Date of injury;
 - iv. Allowed conditions;
 - v. Return to work information;
 - vi. Rehabilitation case closure;
 - vii. Date of death; or
 - viii. Status of a dependent receiving death benefits.
 - 2. When investigating whether the claimant has incurred an overpayment, Claims Services staff will gather relevant information.
 - 3. When an overpayment is identified:
 - a. If it is based on an underlying issue for which a BWC or IC order was issued, Claims Services staff will not issue an order or send a notice of referral to the IC until the decision relating to the underlying order is final.
 - b. If there is an indicator of potential fraud, Claims Services staff will:
 - i. Discuss the investigation with their supervisor; and
 - ii. Follow the referral process in the [Fraud](#) policy and procedure.
 - c. If it appears that all parties believed the payments were made correctly at the time of the payment, but the payments were made in error, Claims Services staff will discuss the situation with their supervisor and BWC attorney to determine appropriate next steps.
 - d. In general, Claims Services staff will complete an *Overpayment Worksheet*.
 - i. The worksheet may not be necessary when the overpayment can be explained using the available order inserts.
 - ii. If family support is part of the compensation being declared overpaid, refer to the CoreSuite job aid titled, *Overpayment Involving Child Support*.
 - iii. The worksheet will list:
 - a) The compensation type;
 - b) The period for which compensation was paid;

- c) The amount that BWC paid to the claimant; and
- d) The warrant number and status (cashed or uncashed).
- iv. Claims Services staff will enter the information as follows:
 - a) If BWC issued five or fewer payments and a worksheet is needed, Claims Services staff will:
 - i) Manually enter the compensation and warrant information using information in the claims management system;
 - ii) Print a copy of the worksheet; and
 - iii) Index the worksheet into the claim.
 - b) If BWC issued more than five payments and a worksheet is needed, Claims Services staff will:
 - i) Request the payment history from 55 – Overpayment Merge on Cognos. Any compensation payments made prior to 1993 will not appear on the report and must be obtained directly from the Financials page on the claims management system;
 - ii) Print a copy of the worksheet; and
 - iii) Index the worksheet into the claim.
- e. Once it has been determined that an IW is overpaid and BWC is preparing to issue notification of the overpayment, Claims Services staff will complete the *Overpayment Checklist* and index it into the claim.
- f. Claims Services staff must:
 - i. Ensure the *Overpayment Worksheet*, *Overpayment Checklist*, and all supporting evidence are indexed into the claim;
 - ii. Enter a claim note that includes:
 - a) An explanation of the overpayment; and
 - b) Actions taken to address the overpayment.
 - iii. Create a work item for any necessary follow-up actions.
 - iv. Refer to “When to Contact Employer Rate Adj” on COR to determine if an employer rate adjustment is required. If yes, send an email to the BWC Employer Rate Adjustment Unit, including:
 - a) The amount of the overpayment; and
 - b) The date range the overpayment covered.
 - v. Issue a BWC order, if one of the following apply:
 - a) The overpayment is based on an underlying issue for which a BWC order was required; or
 - b) The IC issued an order impacting compensation without a specific finding of overpayment.
 - i) Example: The IC finds the claimant was not entitled to TT already received but is silent regarding the overpayment.

- ii) Example: The IC finds the claimant has reached maximum medical improvement (MMI) on a specific date but does not address the fact that the claimant received TT after the MMI date and is overpaid.
- vi. Issue an *Initial Notification of IC Declared Overpayment letter* once the IC decision is final if the IC issued an order with a specific finding of overpayment; and
- vii. Include a copy of the *Overpayment Worksheet* with the order or initial notification letter when a worksheet has been completed.

C. Miscellaneous Overpayment Issues

1. Death

- a. If accrued compensation is requested and granted following the death of an IW or claimant and the claim does not contain a final order establishing an overpayment or an *Initial Notification of IC Declared Overpayment letter*, Claims Services staff will:
 - i. Discuss the claim issues with their supervisor and BWC attorney to determine the appropriate next steps; and
 - ii. If a decision is made to collect the overpayment:
 - a) Deduct the overpayment from the accrued compensation award, according to ORC 4123.511(K); and
 - b) Specifically note the overpayment deduction in the order for accrued compensation.
- b. If an overpayment occurs because compensation continues to be deposited via electronic funds transfer (EFT) or prepaid debit card following the IW's death:
 - i. Claims Services staff will adjust the compensation plan based on the date of death.
 - a) All compensation will be adjusted prior to entering a date of death.
 - b) Adding the date of death will cause a report to be sent to Benefits Payable requesting reclamation of the payments by Benefits Payable.
 - c) Benefits Payable will seek recoupment of the funds based on the date of death and will note in the claims management system if recoupment efforts fail. If recoupment efforts fail and there is no evidence of fraudulent activity, Claims Services staff will deduct any uncollected overpayment from a request for accrued compensation, if any, noting the overpayment deduction in the order for accrued compensation.
 - ii. Claims Services staff will not collect the deceased IW's overpayment from a death benefit award, absent a finding of fraud against the death benefits recipient.

- iii. Once the time frame for filing for accrued compensation has expired, Claims Services staff may consult with their supervisor and determine whether to write off any remaining overpayment balance.
 - c. If an additional dependent is added to an existing death benefit award resulting in overpayment to existing dependents and there is evidence that the existing dependents accepted benefits in good faith without knowledge of the other dependents, Claims Services staff will:
 - i. Follow procedures for reapportionment in the [Death Claims](#) procedure; and
 - ii. Not declare the original dependents overpaid when issuing the order with reapportionment rates.
 - d. If the status of a dependent receiving death benefits changes, or any other circumstances occur resulting in overpayment to the dependent, Claims Services staff will:
 - i. Follow the investigation steps set forth in Section V.B. above; and
 - ii. Collect the overpayment from:
 - a) The dependent's death benefit claim if funds are available; and
 - b) Current or future claims filed by the dependent.
- 2. Bankruptcy
 - a. If an *IW Bankruptcy Notice* is present in the claims management system when processing an overpayment, Claims Services staff will:
 - i. Immediately discontinue collecting the overpayment;
 - ii. Send an email to the BWC Legal Division to:
 - a) Determine if the overpayment was discharged in the bankruptcy proceeding; and
 - b) Request overpayment processing instructions.
 - iii. Claims Services staff will take action based on the direction provided by the Legal Division.
 - a) If the overpayment was included in the bankruptcy:
 - i) Claims Services staff will enter a claim note stating: "Injured worker filed bankruptcy <<insert date>>, Case no. <<insert case number>>. Do not recoup the overpayment from any future awards. Overpayment of \$_____ was discharged in the bankruptcy."
 - ii) Claims Services staff will then send a request to the BWC Service Desk requesting that the overpayment be eliminated. The Service Desk will assign the issue to a CoreSuite team member for resolution (see the [Adjustment of Overpaid Compensation](#) policy and procedure for instructions on manual adjustment of a claim).
 - b) If the overpayment was not included in the bankruptcy:
 - i) Claims Services staff will enter a claim note stating: "Injured worker filed bankruptcy <<insert date>>, Case no. <<insert case number>>."

apply to awards of scheduled loss compensation or percentage of permanent partial disability.

7. Family Support: If there has been an overpayment of family support, refer to the [*Family Support Orders and Attorney Fees Paid Pursuant to Deductions of Child Support from Lump Sum Payments*](#) policy and procedure.
8. There is an indication of fraudulent activity, Claims Services staff must follow the referral process in the [*Fraud*](#) policy and procedure.