

FACTUAL HISTORY

On January 11, 1995 appellant, then a 45-year-old painter's helper, filed a traumatic injury claim alleging that he injured his head, neck and shoulder in the performance of duty. The Office accepted appellant's claim on March 29, 1995 for right shoulder strain and thoracic strain. The Office granted appellant a schedule award for eight percent permanent impairment of his right upper extremity on February 24, 1997.

On April 27, 1997 the employing establishment separated appellant due to physical disqualification from his position. He filed a notice of recurrence of disability on January 5, 1998 alleging that he was totally disabled beginning April 28, 1997. The Office authorized compensation benefits, but did not make a deduction for basic life insurance.

The Office suspended appellant's compensation benefits effective June 28, 1998 as he was found guilty of a felony and sentenced to a term of incarceration of not more than one year beginning on June 29, 1998. Appellant drew disability retirement benefits from the Office of Personnel Management (OPM) on or after June 29, 1998. On September 20, 1999 he elected to receive compensation benefits rather than OPM benefits effective April 27, 1999, the date of his release from incarceration. In a letter dated June 16, 2000, the Office entered appellant on the periodic rolls effective April 27, 1999 and indicated that there was no deduction for basic life insurance.

In a letter dated October 30, 2003, the Office informed appellant that it had made a preliminary finding that he received an overpayment of compensation in the amount of \$457.40. The Office stated that this overpayment occurred as it had failed to properly deduct basic life insurance premiums from appellant's disability compensation for the period of December 21, 1997 through July 12, 2003. The Office determined that appellant was not at fault in the creation of the overpayment and informed him of the steps necessary to establish entitlement of waiver of the overpayment. The Office requested that appellant complete an included overpayment recovery questionnaire and that he provide supporting documentation of his income and expenses. He did not respond and did not submit any financial information.¹

By decision dated December 2, 2003, the Office finalized the October 30, 2003 preliminary determination concluding that appellant had received an overpayment in compensation in the amount of \$457.40 due to the Office's failure to deduct premiums for basic life insurance from his continuing compensation benefits from December 21, 1997 through July 12, 2003, that he was not at fault in the creation of the overpayment and that appellant was not entitled to waiver of the overpayment. The Office noted that appellant did not provide any financial information and stated that he "may repay the overpayment at any time by mailing a check in the amount of \$457.40" to the Office.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the federal government are eligible to participate in basic life insurance and one or

¹ Appellant did submit additional medical evidence.

more of the options.² The coverage for basic life is effective unless waived³ and premiums for basic and optional life coverages are withheld from the employee's pay.⁴

The regulation of OPM, the agency that administers the FEGLI program, provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances⁵ and may also retain the optional life insurance.⁶ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.⁷ If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments.⁸ Thus while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.⁹

ANALYSIS -- ISSUE 1

The record shows that appellant was enrolled in basic life insurance while in receipt of compensation benefits. The record further reveals that the Office failed to deduct premiums for basic life insurance from appellant's compensation during the period December 21, 1997 through June 28, 1998 and April 27, 1999 through July 12, 2003. The Board, therefore, finds that the Office properly determined that this underdeduction constituted an overpayment of compensation.¹⁰ The Office calculated the amount of the overpayment by multiplying appellant's adjusted salary by the premium rates per thousand for basic life insurance to find the applicable premiums for the applicable time periods.¹¹ However, the Office improperly multiplied the premiums by the total number of pay periods for the periods December 21, 1997 through July 12, 2003. The Office did not consider the suspension of appellant's compensation

² 5 C.F.R. § 870.201.

³ 5 C.F.R. § 870.204(a).

⁴ 5 C.F.R. § 870.401(a).

⁵ 5 C.F.R. § 870.701, subpart G.

⁶ 5 C.F.R. § 871.201, subpart B; 870.201, subpart B; 873.203, subpart B.

⁷ 5 C.F.R. § 870.501.

⁸ 5 C.F.R. § 872.410, subpart D.

⁹ *Scherri L. Stanley*, 53 ECAB ____ (Docket No. 01-495, issued March 8, 2002).

¹⁰ *See Jacob Adams*, 40 ECAB 870 (1989).

¹¹ Appellant's biweekly premium of \$3.30 for the period of December 21, 1997 to April 24, 1999 (The basic life insurance premium rate decreased on April 14, 1999 and again on January 1, 2003) was reached by multiplying the basic life insurance rate of \$0.165 per thousand by appellant's adjusted annual salary of \$20,000.00. This product was then doubled as appellant received compensation every four weeks and multiplied by the total number of four-week pay periods to reach the underpayment for December 21, 1997 through April 24, 1999. The Board notes that the Office extended the premium rates for complete pay periods rather than considering the actual date of the rate decreases.

benefits from June 29, 1998 through April 27, 1999 in calculating the amount of the overpayment. The record reflects that appellant received benefits from OPM during the period of his incarceration and that the Office was not responsible for payment of basic life insurance premiums during this 10-month period.¹² As the Office failed to properly calculate the amount of the overpayment, the case must be remanded on this issue.

LEGAL PRECEDENT -- ISSUE 2

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Federal Employees' Compensation Act,

the first test under section 8129(b), as specified in section 10.436, provides:

“(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.”¹³

Section 10.437 of the regulations covers the equity and good conscience standard and provides:

“(a) Recovery of an overpayment is considered against equity and good conscience when any individual who received an overpayment 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 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. In making such a decision, [the Office] does not consider the individual’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 the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

¹² The Office’s worksheet indicates that basic life insurance premiums of \$6.60 should be deducted every 4 weeks for a total of 16 total 4-week pay periods from December 21, 1997 to April 24, 1999 in the amount of \$105.60. The Board notes that appellant is responsible for only seven, 4-week pay periods from December 21, 1997 to June 29, 1998 for a total of \$46.20.

¹³ 20 C.F.R. § 10.436.

(2) To establish that an individual's position has changed for the worst, 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."¹⁴

The fact that a claimant was without fault in creating the overpayment does not necessarily preclude the Office from recovering all or part of the overpayment; the Office must exercise its discretion in determining whether waiver is warranted under either of these two standards.¹⁵ The waiver of or refusal to waive an overpayment of compensation by the Office rests within its discretion pursuant to statutory guidelines.¹⁶

ANALYSIS -- ISSUE 2

The Office, in its preliminary notification to appellant of the existence of the overpayment, informed him that he needed to explain his reasons for seeking a waiver, complete the recovery questionnaire form and submit financial documents to support his claimed income and expenses. The overpayment recovery questionnaire is designed to obtain the financial information to determine whether adjustment or recovery would defeat the purpose of the Act. Appellant did not return the overpayment recovery questionnaire provided by the Office and he did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Neither did he submit evidence to establish that recovery of the overpayment would be against equity and good conscience because, in reliance on the overpaid compensation, he relinquished a valuable right or changed his position for the worse. Although appellant is without fault in the creation of the overpayment, he nevertheless bears responsibility for providing the financial information necessary to support his request to waive recovery of the overpayment. Section 10.438 of the Office's regulations states that a claimant who received an overpayment is responsible for providing information about income, expenses and assets to the Office so that it may determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.¹⁷ Failure to submit the information, which will also be used to determine a repayment schedule if necessary, within 30 days of a request from the Office, will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver will be considered until the information is submitted.¹⁸

As appellant submitted no evidence in this case to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the

¹⁴ 20 C.F.R. § 10.437.

¹⁵ *Linda Hilton*, 52 ECAB 476 (2001).

¹⁶ *Rudolph A. Geci*, 51 ECAB 423 (2000).

¹⁷ 20 C.F.R. § 10.438(a).

¹⁸ 20 C.F.R. § 10.438(b); *Linda Hilton*, *supra* note 15.

Board finds that the Office did not abuse its discretion in refusing to waive recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Office's procedure manual provides that an overpayment is not considered to be a debt until the claimant has been provided with the opportunity for a hearing and other due process.¹⁹ The final overpayment decision constitutes the first demand for repayment²⁰ and the overpayment is then considered to be due and payable or collectible by the Office.²¹ The Office's final overpayment decision must address the appropriate collection strategies to be implemented.²² The Office's preferred methods of recovery in descending order are: recovery of the entire debt from accrued compensation; then voluntary prompt repayment of the debt in a lump sum and then deduction of installment payments from periodic compensation.²³ In a situation where the claimant is receiving continuing compensation benefits, the debt should be recovered from such benefits as quickly as possible beginning the first periodic roll payment following the release of the final overpayment decision.²⁴

Office regulations regarding the recovery of an overpayment of compensation provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.”²⁵

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.0300.2.d. (September 1994).

²⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Overpayment Overview*, Chapter 6.0100.2.e (September 1994).

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.0300.8.c (September 1994).

²² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4.d(1)(a) (September 1994).

²³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.0300.7 (September 1994).

²⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.0300.8.c (September 1994).

²⁵ 20 C.F.R. § 10.441(a).

ANALYSIS -- ISSUE 3

In this case, appellant is receiving compensation benefits based on his election of such effective April 27, 1999. In the December 2, 2003 final overpayment decision, the Office requested that appellant mail a check in the amount of \$457.40, the entire amount of the overpayment to the Office. However, the Office failed to provide him with the additional appropriate recovery method of deduction of the installment payments from periodic compensation in accordance with its procedures. As appellant is receiving compensation benefits and has not refunded the amount owed to the Office, recovery of the overpayment must be made by decreasing subsequent payments of compensation. Neither the Federal Employees' Compensation Act, nor its implementing regulations make any provision for a mandatory lump-sum repayment by a claimant who is receiving continuing compensation benefits and is not entitled to any accrued compensation benefits.²⁶ On remand, therefore, the Office should apply the criteria of section 10.441(a) to arrive at a proper repayment schedule.

CONCLUSION

The Board finds that appellant received an overpayment of compensation because the Office failed to deduct premiums for basic life insurance for the periods December 21, 1997 through June 29, 1998 and April 27, 1999 through July 12, 2003. However, the Board finds that the Office did not properly calculate the amount of the overpayment. The Board further finds that the Office properly denied waiver of recovery of the overpayment. The Board also finds that the Office improperly pursued recovery only through a lump-sum payment of the overpayment.

²⁶ See *Barbara Hughes*, 48 ECAB 398, 403 (1997).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and remanded for additional actions consistent with this decision of the Board.

Issued: August 5, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member