

**United States Department of Labor
Employees' Compensation Appeals Board**

JAMES D. JOHNSON, Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Dallas, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-675
Issued: June 1, 2004**

Appearances:
James D. Johnson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 14, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 5, 2004 finding an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issue.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received an overpayment of \$504.00 for the period October 15, 2000 through October 4, 2003 due to incorrect deductions for life insurance premiums; (2) whether the Office properly denied waiver of recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$253.00 every four weeks from appellant's continuing compensation.

FACTUAL HISTORY

On April 8, 1997 appellant, then a 40-year-old mail handler, injured his left hip while in the performance of duty. The Office accepted appellant's claim for acute left hip strain and later upgraded the condition to aggravation of preexisting degenerative joint disease. Additionally,

the Office authorized a total left hip arthroplasty. Appellant was placed on the periodic compensation rolls effective October 15, 2000.

On November 26, 2003 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$504.00 for the period October 15, 2000 through October 4, 2003 because basic life insurance premiums had not been deducted from appellant's compensation. The Office found that appellant was without fault in the matter because he could not have been aware that the payments he had been receiving were incorrect. The Office advised appellant that if he disagreed with the fact or amount of the overpayment he could submit new evidence in support of his contention. The Office informed appellant that he had the right to request a prerecoument hearing on the matter of the overpayment and that any response he wished to make with regard to the overpayment should be submitted within 30 days of the November 26, 2003 letter. Appellant did not respond to this request within 30 days.

In a decision dated January 5, 2004, the Office finalized the preliminary determination regarding the overpayment of \$504.00. The Office noted that appellant had been advised on November 26, 2003 that a preliminary finding had been made that an overpayment had occurred, but appellant had not responded within 30 days. Therefore, the Office found that appellant was not entitled to waiver. The Office also determined that \$253.00 would be withheld from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

When Federal Employees' Group Life Insurance (FEGLI) premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because the Office must pay the full premium to the Office of Personnel Management (OPM) upon discovery of the error.¹

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$504.00 for the period October 15, 2000 through October 4, 2003. The record shows that an overpayment occurred because FEGLI basic life premiums were not deducted from appellant's compensation during this period. The Office calculated the amount of overpayment by taking the amount of basic life insurance that should have been deducted every two weeks, \$13.02, between October 15, 2000 and January 25, 2003, and multiplying it times 30, the number of bi-weekly pay periods during that period, which totaled \$390.60. The Office then took the bi-weekly deduction for life insurance between January 26 and September 6, 2003, \$12.60, multiplied it times 9, the number of bi-weekly pay periods during that period, which amounted to \$113.40, to arrive at a total overpayment of \$504.00.² Based on this determination, the Office properly found that appellant received an overpayment of compensation in the stated amount during that period.

¹ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

² The Office calculated the amount of bi-weekly deduction for life insurance based on appellant's yearly salary of \$39,559.00.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Federal Employees' Compensation Act, 5 U.S.C. § 8129(b), and the implementing regulations, an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.³ Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.⁴ However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.⁵ The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁶

The applicable regulations provides that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because 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 the beneficiary's assets do not exceed a specified amount as determined by the Office.⁷ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁸

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.⁹

ANALYSIS -- ISSUE 2

In the instant case, appellant did not submit any information regarding his financial situation. Appellant thus failed to submit sufficient evidence showing that he needs substantially all of the current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed, as requested by the Office in its November 26, 2003 letter. Therefore,

³ 20 C.F.R. §§ 10.430, .433, .434, .436, .437, .441(a) (1999).

⁴ 20 C.F.R. § 10.433(a) (1999).

⁵ *Jorge O. Diaz*, 51 ECAB 124 (199).

⁶ 20 C.F.R. § 10.434 (1999).

⁷ 20 C.F.R. § 10.436 (1999).

⁸ 20 C.F.R. § 10.437 (1999).

⁹ 20 C.F.R. § 10.438(a) (1999).

he does not qualify for waiver under the “defeat the purpose of the Act” standard.¹⁰ Further, there is no evidence in this case, nor did appellant allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received from October 15, 2000 through October 4, 2003. Accordingly, the Office properly found that appellant’s failure to respond to its November 26, 2003 letter by submitting the requested financial information was sufficient grounds to find that he does not qualify for waiver. Pursuant to its regulations, the Office therefore did not abuse its discretion by issuing its January 5, 2004 final decision denying waiver of recovery of the overpayment in the amount of \$504.00.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 provides that, if an overpayment of compensation has been made to an individual entitled to further payments and 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.¹¹

ANALYSIS -- ISSUE 3

With respect to the Office’s decision to deduct \$253.00 every four weeks from appellant’s continuing compensation, the Board finds that such a repayment schedule is in accordance with section 10.441(a). In exercising its authority under section 10.441(a), the Office must take 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.”¹² Given the lack of financial information available, the Board finds that the Office reasonably imposed a repayment schedule of \$253.00 every four weeks.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$504.00 for the period October 15, 2000 through October 4, 2003 because basic life insurance premiums were not deducted from his compensation. The Board also finds that the Office did not abuse its discretion in denying waiver of the overpayment and in requiring repayment by deducting \$253.00 every four weeks from appellant’s continuing compensation.

¹⁰ See *Nina D. Newborn*, 47 ECAB 132 (1995).

¹¹ 20 C.F.R. § 10.441 (1999).

¹² 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member