United States Department of Labor
Employees' Compensation Appeals Board

KEITH H. MAPES, Appellant	)	
and	)	**Docket No. 03-1747**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	**Issued: October 20, 2004**

Appearances:
Keith H. Mapes, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 2, 2003 appellant filed a timely appeal from the June 19, 2003 merit decision of the Office of Workers' Compensation Programs, which found an overpayment of compensation. The Board has jurisdiction to review this decision.[1]

ISSUES

The issues are: (1) whether an overpayment of $4,791.17 occurred from June 1, 1997 to June 16, 2002; (2) whether the Office properly denied waiver; and (3) whether the Office abused its discretion in setting the rate of recovery from continuing compensation.

FACTUAL HISTORY

On April 15, 1996 appellant, then a 54-year-old property disposal technician, injured his back in the performance of duty when he stepped into a hole in the ground. The Office accepted

[1] 20 C.F.R. §§ 501.2(c), 501.3.

his claim for an aggravation of herniated nucleus pulposus at the L4-5 level and paid compensation.

Appellant had signed a life insurance election form on January 30, 1991 authorizing deductions for basic life insurance and optional additional coverage. A certification of insurance status dated May 21, 2002 shows continuous coverage from January 20, 1991 to May 31, 1997, the date he was separated from employment. It appears he then converted to an individual insurance policy.

On June 10, 2002 the Office of Personnel Management (OPM) advised that appellant had basic life insurance coverage with no reduction after age 65. He also had optional additional coverage. OPM noted that the commencement date for basic and optional coverage was the date compensation began, while the commencement date for post-retirement basic life deductions was June 1, 1997.

Numerous computer printouts indicate that the Office deducted premiums from appellant's compensation for optional additional insurance but not for his basic life or post-retirement basic life coverage. Those deductions did not begin until June 16, 2002.

On July 5, 2002 the Office made a preliminary finding that an overpayment of $4,791.17 arose because the Office did not deduct premiums from appellant's compensation for basic life and post-retirement basic life insurance from June 1, 1997 to June 15, 2002. The Office found that appellant was not at fault in the creation of the overpayment.

Appellant requested waiver and a prerecoupment hearing. At the hearing, which was held on March 26, 2003, he testified about his income and expenses.

In a decision dated June 19, 2003, the Office finalized its preliminary findings on the fact and amount of overpayment. The Office found that appellant was without fault but denied waiver of the overpayment because his monthly income exceeded monthly expenses by $1,122.00, leaving sufficient discretionary income to justify repayment. Noting also that appellant's expenses included $400.00 for recreational activities, the Office determined that he could repay the debt without great hardship at a rate of $300.00 a month from continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provide that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[2] When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.[3]

[2] 5 U.S.C. § 8102(a).

[3] *Id*. at § 8129(a).

Under the Federal Employees' Group Life Insurance Program (FEGLI), most civilian employees of the federal government are eligible to participate in basic life insurance and one or more of the options.[4] The coverage for basic life insurance is effective unless waived[5] and the premiums for basic and optional life coverage are withheld from the employee's pay.[6] At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationer" status. If the compensationer chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.[7] When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM upon discovery of the error.[8]

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on April 15, 1996 and received compensation for his disability. Although he had authorized deductions for basic life insurance, the Office deducted no premiums from his compensation for basic life or post-retirement basic life coverage. This error caused an overpayment of compensation to appellant. The Office should have deducted premiums for basic life insurance when compensation for the employment injury first began and it should have deducted premiums for post-retirement basic life beginning June 1, 1997, when he was separated from employment. The Board will affirm the Office's June 19, 2003 decision on the issue of fact of overpayment.[9]

The record contains an overpayment worksheet showing the premium rate schedule for basic life and post-retirement basic life with no reduction after age 65. For basic life, the Office took appellant's adjusted base pay in thousands (30), multiplied it by the premium rate per thousand in effect from June 1, 1997 to April 24, 1999 (0.165) and multiplied that by the number of pay periods from June 1, 1997 to April 24, 1999 (49.5). This showed that the Office should have deducted $245.03 for basic life coverage during that period.[10] Using the same formula, the Office calculated that it should have deducted $381.30 for basic life coverage from April 25, 1999 to June 15, 2002 (30 adjusted base pay in thousands x 0.155 premium rate per thousand x 82 pay periods). For post-retirement basic life with no reduction, the Office took appellant's adjusted salary in thousands (36), multiplied it by the premium rate per thousand in effect from

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[4] 5 U.S.C. § 8702(a).

[5] 5 U.S.C. § 8702(b).

[6] 5 U.S.C. § 8707.

[7] 5 U.S.C. § 8706(b).

[8] 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

[9] The overpayment that arose in this case had nothing to do with premiums for optional additional insurance, specifically, Option B with two multiples and full reduction. The Office declared no overpayment prior to June 1, 1997.

[10] *See* Federal (FECA) Procedure Manual, Part 5 – Benefit Payments, *Life Insurance*, Chapter 5.401.8 (August 2004).

June 1, 1997 to April 24, 1999 (0.78) and multiplied that by the number of pay periods (again, 49.5). This showed that the Office should have deducted $1,389.96 for post-retirement basic life coverage from June 1, 1997 to April 24, 1999. The Office also should have deducted $2,774.88 for post-retirement basic life coverage from April 25, 1999 to June 15, 2002 (36 adjusted salary in thousands x 0.94 premium rate per thousand x 82 pay periods). Thus, the overpayment resulting from the Office's error amounted to $4,791.17. The Board will affirm the June 19, 2003 decision on the amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.[11] If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless (1) adjustment or recovery of the overpayment would defeat the purpose of the Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.[12]

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: (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] 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.[14] 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.[15]

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.[16]

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[11] 20 C.F.R. § 10.433(a) (1999).

[12] *Id*. at § 10.434.

[13] *Id*. § 10.436.

[14] *Id*. at § 10.437(a).

[15] *Id*. at § 10.437(b).

[16] *Id*. at § 10.438(a).

ANALYSIS -- ISSUE 2

Although the Office found that appellant was without fault in the matter of the overpayment, repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. The Office accepted all the financial disclosures appellant made at the hearing and correctly noted that his monthly income exceeded monthly expenses by $1,122.00. This means that appellant does not need substantially all of his current income (including compensation benefits) to meet current ordinary and necessary living expenses.[17] The Office properly concluded that recovery of the overpayment would not cause hardship to appellant or defeat the purpose of the Act.

Further, as it appears that appellant would not experience severe financial hardship in attempting to repay the debt and he made no argument that he gave up a valuable right or changed his position for the worse in reliance on the overpaid compensation. Recovery of the overpayment is not considered to be against equity and good conscience. The Board finds that the Office properly denied waiver of the overpayment and is required by law to recover the debt by decreasing later payments to which appellant is entitled.[18]

LEGAL PRECEDENT -- ISSUE 3

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.[19]

ANALYSIS -- ISSUE 3

The Office noted that appellant's monthly income exceeded monthly expenses by $1,122.00 and that expenses included $400.00 in recreational or "goof-off" money, as appellant put it. Taking these factors into account, the Office determined that he could repay the debt at $300.00 per month without great hardship. The Board finds that the Office gave due regard to the relevant factors noted above and did not abuse its discretion in setting a rate of recovery that left appellant with $822.00 in discretionary income per month on top of $400.00 in recreational expenses. The Board will affirm the Office's June 19, 2003 decision on the issue of the rate of recovery.

[17] Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.6.a(1), .6(a)(4) (September 1994).

[18] *Supra* note 3.

[19] 20 C.F.R. § 10.441(a) (2003).

CONCLUSION

The Board finds that an overpayment of $4,791.17 occurred from June 1, 1997 to June 16, 2002, when the Office neglected to deduct from appellant's compensation premiums for basic life and post-retirement basic life insurance from June 1, 1997 to June 16, 2002. The Office properly denied waiver of the overpayment: recovery would not defeat the purpose of the Act or be against equity and good conscience. Also, the Office did not abuse its discretion in setting the rate of recovery from continuing compensation.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member