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FREDDIE L. THOMAS, Appellant	)	
	)	
and	)	Docket No. 05-85
	)	Issued: July 19, 2005
DEPARTMENT OF THE AIR FORCE, NAVAL	)	
AIR STATION JOINT RESERVE BASE,	)	
Fort Worth, TX, Employer	)	
	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On October 4, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs finding that an overpayment occurred in the amount of \$1,822.11, that appellant was not at fault in the creation of the overpayment and that waiver was not warranted. The Office also determined that \$50.00 would be deducted every 28 days from appellant's ongoing compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$1,822.11; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly decided to collect \$50.00 from each compensation check until this payment was recouped.

FACTUAL HISTORY

This case has previously been before the Board on appeal. In a July 14, 2004 decision,¹ the Board found that appellant had received an overpayment of compensation due to the failure of the Office to deduct life insurance premiums from appellant's compensation from September 13, 1998 through June 15, 2003 and September 13, 1998 through June 14, 2003. However, the Board found that the Office had not provided the necessary calculations to determine how the amount of the overpayment was calculated. The Board remanded the case for a detailed explanation of how the Office reached the amount of the overpayment. The Board further found that the Office had not evaluated appellant's financial information and directed the Office to fully address the issue of whether appellant was entitled to waiver of the overpayment. The facts and the circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

The Office requested additional financial information from appellant by letter dated August 30, 2004. Appellant completed an overpayment recovery questionnaire on September 1, 2004. He listed his monthly income as \$3,751.00, and his monthly expenses of rent or mortgage, \$671.70; food, \$400.00; clothing, \$300.00; utilities, \$360.00; and car payments totaling \$1,289.03. Appellant indicated that he did not have any additional resources and stated that he could not afford to repay the overpayment.

The Office copied the payment worksheet in the record at the time of the Board's July 14, 2004 decision as the basis for the amount of the overpayment. The Office also included computer printouts regarding the amount of the overpayment previously included in the record.

On September 14, 2004 the Office reissued the October 24, 2003 decision. In the accompanying memorandum to the Director dated September 14, 2004, the Office reviewed appellant's September 1, 2004 overpayment recovery questionnaire and found that appellant and his wife had additional income of \$1,400.00 and claimed an additional \$100.00 per month food expenses and \$50.00 per month in clothing expenses. The Office concluded that appellant's income exceeded his expenses by approximately \$700.00 per month. The Office determined that appellant was not entitled to waiver of the overpayment and that the overpayment should be recovered by deducting \$50.00 per month from his continuing compensation benefits effective October 2, 2004.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides 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

¹ Docket No. 04-411 (issued July 14, 2004).

² 5 U.S.C. §§ 8101-8193, 8102(a).

because of 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

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 more of the options.⁴ The coverage of basic life insurance is effective unless waived⁵ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁶ At separation from the employing establishing, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensation 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 the Office of Personnel Management upon discovery of the error.⁸

ANALYSIS

In the prior appeal, the Board found that appellant had received an overpayment of compensation due to underwithholding of life insurance premiums. However, the Board found that the Office did not provide sufficient information to determine the basis for the amount of insurance premiums calculated. The Board remanded the case for a detailed explanation by the Office on how the amount of the overpayment was calculated.⁹

The Office did not provide this information following the Board's July 14, 2004 decision. The record does not contain additional information or calculations regarding the amount of the overpayment that was not before the Board at the time of the July 14, 2004 decision. As the Office did not provide the additional information regarding the calculation of the amount of the overpayment as requested by the Board, this issue is not in posture for decision and must be again remanded to the Office for an appropriate basis for the calculations of the overpayment and an appropriate decision on this issue.¹⁰

³ 5 U.S.C. § 8129(a).

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); *Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004).

⁹ *Supra* note 1.

¹⁰ As the Office did not address the amount of the overpayment, as previously directed, the Board will not address the remainder of the issues on appeal. See *Darlene A. Luck*, 54 ECAB ____ (Docket No. 03-1215, issued August 5, 2003).

CONCLUSION

The Board finds that the Office did not provide the additional evidence to establish the amount of the overpayment in this case as requested in the Board's prior decision. Therefore, this case is not in posture for a decision and must be remanded to the Office for the Office to include in the record the basis for its calculations such that the Board may recreate the appropriate amount of the overpayment. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision addressing the amount of the overpayment, waiver and recovery if appropriate.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2004 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: July 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board