

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

JOHN A. MIHALOV, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Spring, TX, Employer**

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**Docket No. 05-597
Issued: June 22, 2005**

Appearances:
John A. Mihalov, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 12, 2005 appellant filed a timely appeal of a December 6, 2004 merit decision of the Office of Workers' Compensation Programs, which found that he received an overpayment of compensation in the amount of \$779.85. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant received an overpayment in the amount of \$779.85; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$50.00 every four weeks from appellant's continuing compensation. On appeal, appellant generally contends that repayment would cause financial hardship.

FACTUAL HISTORY

On January 5, 1996 appellant, then a 39-year-old city carrier, sustained an acute lumbar strain and herniated disc at L3-4 when he injured his back lifting a tray of mail. He stopped

work that day, underwent surgical laminectomy on June 5, 1996 and was placed on the periodic rolls. The evidence of record indicating CA-7 claim forms and a computation worksheet indicate, that he elected optional life insurance, code Z.

Appellant returned to modified duty for four hours per day on March 10, 1997 and to full-time modified duty on January 1, 2000.¹ On April 24, 2001 he sustained a recurrence of disability and was returned to the periodic rolls. An Office computation worksheet dated October 1, 2003 indicates that deductions for appellant's basic life insurance premiums were not made from his compensation. Numerous computer printouts indicate that the Office deducted premiums for optional additional life insurance from his compensation but did not deduct premiums for his basic life insurance coverage. On July 15, 2004 appellant underwent a second surgical procedure and on October 3, 2004 the Office began deducting basic life insurance premiums from his continuing compensation.

On October 5, 2004 the Office issued a preliminary finding that an overpayment in compensation in the amount of \$779.85 had been created. The Office explained that the overpayment resulted because premiums for basic life insurance had not been deducted from appellant's wage-loss compensation for the period April 20, 1996 to October 2, 2004. It found that he was not at fault in the creation of the overpayment. Overpayment worksheets contained in the record indicate that for the period April 20, 1996 to March 1, 1997, basic life premiums were \$163.35, for the period June 23, 2001 to October 2, 2004, \$616.50, for a total of \$779.85. Appellant submitted an overpayment questionnaire furnished by the Office which provided that he had a total monthly income of \$1,950.84 and total expenses of \$1,769.00. On December 6, 2004 the Office finalized the overpayment decision. The Office reiterated that appellant was not at fault in the creation of the overpayment, but found that he was not entitled to waiver and ordered repayment by deducting \$50.00 every four weeks from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act² 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 duty.³ 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.⁴

¹ The record indicates that appellant filed both a CA-1, traumatic injury claim and a CA-2a, recurrence claim for the injury sustained on April 24, 2001. In a decision dated September 18, 2001, the Office denied that he sustained a traumatic injury on that date. Thereafter the cases were doubled and on December 6, 2001 he was returned to the periodic rolls, effective June 23, 2001.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8102(a).

⁴ 5 U.S.C. § 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.⁵ The coverage for basic life insurance is effective unless waived,⁶ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁷ At separation from the employing establishment, 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.⁸ 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 (OPM) upon discovery of the error.⁹ Office procedures provide that in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage.¹⁰

ANALYSIS -- ISSUE 1

In this case, the record supports that for the periods April 20, 1996 to March 10, 1997 and June 23, 2001 to October 2, 2004, the Office did not make deductions for appellant's basic life insurance coverage and made appropriate deductions for optional life insurance. Office procedures provide that, in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage and numerous computer printouts contained in the case record indicate that, while deductions were made for optional life insurance, none were made for basic life insurance.¹¹ An Office computation worksheet contained in the record advises that for the period April 20, 1996 to March 1, 1997, basic life premiums were \$163.35 and for the period June 23, 2001 to October 2, 2004 \$616.50, for a total of \$779.85. The Board finds that, as basic life insurance premiums for the period in question totaled \$779.85 and these premiums were not deducted from appellant's continuing compensation, an overpayment in compensation had been created in this amount.

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.¹² If the Office finds that the

⁵ 5 U.S.C. § 8702(a); 5 C.F.R. § 870.201.

⁶ 5 U.S.C. § 8702(b); 5 C.F.R. § 870.204(a).

⁷ 5 U.S.C. § 8707.

⁸ 5 U.S.C. § 8706(b); 20 C.F.R. § 870.401.

⁹ 5 U.S.C. § 8707(d); *Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004).

¹⁰ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4(a) (August 2004).

¹¹ *Id.*

¹² 20 C.F.R. § 10.433(a).

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.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

As the Office found appellant without fault in the creation of the overpayment in compensation, waiver must be considered and 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.¹⁸

Appellant furnished the Office with an overpayment questionnaire which indicates that his monthly income of \$1,950.84 exceeded his monthly expenses of \$1,769.00 by \$181.84. Office procedures provide that an individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00, *i.e.*, the amount of monthly funds available

¹³ 20 C.F.R. § 10.434.

¹⁴ 20 C.F.R. § 10.436.

¹⁵ 20 C.F.R. § 10.437(a).

¹⁶ 20 C.F.R. § 10.437(b).

¹⁷ 20 C.F.R. § 10.438(a).

¹⁸ 20 C.F.R. §§ 10.436, 10.437.

for debt repayment is the difference between current income and adjusted living expenses plus \$50.00,¹⁹ which in this case would be \$131.84. The Board, therefore, finds that the Office properly concluded that recovery of the overpayment would not cause financial hardship to appellant and thus, defeat the purpose of the Act. Furthermore, as appellant made no argument that he gave up a valuable right or changed his position for the worse in reliance on the overpaid compensation, the Office properly determined that recovery would not be against equity and good conscience. While appellant argued on appeal that repayment would cause financial hardship, he did not provide the Office with any additional evidence to support this contention. The Board, therefore, 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.²⁰

LEGAL PRECEDENT -- ISSUE 3

The Office's implementing regulations 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that the Office gave due regard to the relevant factors noted above in setting a rate of recovery of \$50.00 per compensation period. The record indicates that appellant had adjusted discretionary income of \$131.84 per month. The Office, therefore, did not abuse its discretion in finding that he should repay his overpayment at the rate of \$50.00 per compensation period.

CONCLUSION

The Board finds that an overpayment of \$779.85 occurred from April 20, 1996 to October 2, 2004 because the Office neglected to deduct premiums for basic life insurance from appellant's continuing compensation. The Board further finds that the Office properly denied waiver of the overpayment in compensation and did not abuse its discretion in setting the rate of recovery at \$50.00 each compensation period.

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1), (a)(4) (April 2003).

²⁰ 5 U.S.C. § 8129(a).

²¹ 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2004 be affirmed.

Issued: June 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member