

On August 1, 1991 appellant, then a 50-year-old clerk, filed an occupational disease claim alleging that she sustained injury due to performing repetitive duties at work. The Office

accepted that appellant sustained a cervical strain, de Quervain's disease of the left wrist and left carpal tunnel syndrome. She receives disability compensation in connection with these injuries. In 1996, the Office also accepted that appellant sustained right shoulder bursitis.¹ Appellant retired from the employing establishment effective January 1, 2005. She originally elected to receive civil service retirement benefits from the Office of Personnel Management (OPM). In September 2005, she changed her election so that she would receive Office benefits retroactive to January 1, 2005.

In a letter dated November 1, 2005, the Office advised appellant that it had made a preliminary determination that she received a \$1,093.45 overpayment of compensation for the period January 1 to October 1, 2005. The Office indicated that this overpayment occurred when it failed to deduct premiums for health benefits and basic and optional life insurance and made a further preliminary determination that appellant was not at fault in the creation of the overpayment. The Office advised appellant that she needed to complete and submit an enclosed Form OWCP-20 overpayment recovery questionnaire within 30 days if she wished to request waiver of the overpayment. It attached documents which showed that she still elected health benefits and basic and optional life insurance between January 1 to October 1, 2005 and that the premiums were not deducted from her compensation during this period. The Office also attached worksheets which showed that, during the period January 1 to October 1, 2005, the premiums that should have been deducted were \$833.74, health benefits, \$73.39, for basic life insurance and \$186.32, for optional life insurance.

By decision dated December 7, 2005, the Office finalized its preliminary determination that appellant received a \$1,093.45, overpayment of compensation for the period January 1 to October 1, 2005. It also determined that she was not entitled to waiver of the overpayment because she did not submit the requested financial information within the allotted time and that the overpayment should be recovered by deducting \$200.00 from appellant's compensation payments every 28 days.²

LEGAL PRECEDENT -- ISSUE 1

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employee Health Benefits (FEHB) program. The regulation of OPM, which administers the FEHB program, provides guidelines for the registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(b)(1) provides:

“An employee or annuitant is responsible for payment of the employee's share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct

¹ In 1991, the Office terminated appellant's compensation from a September 2, 1984 employment injury.

² The Office indicated that the deduction of \$200.00 would only constitute 20 percent of each of appellant's compensation payments.

premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due to the United States in the amount of the proper employee withholding required for that pay period.”³

In addition 5 C.F.R. § 890.502(d) provides:

“An agency that withholds less than or none of the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of the title, 5 United States Code, to OPM for deposit in the Employees’ Health Benefits Fund.”⁴

Thus, under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁵ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁶ The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM when the error is discovered.⁷ Section 8129(a) of the Federal Employees’ Compensation Act provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which the individual is entitled.⁸

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.⁹ The coverage for basic life insurance is effective unless waived¹⁰ and the premiums for basic and optional life coverage are withheld from the employee’s pay.¹¹ While the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee’s compensation.¹² 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

³ 5 C.F.R. § 890.502(b)(1).

⁴ *Id.* at § 890.502(d).

⁵ *Id.* at § 890.502(b)(1).

⁶ *Id.* at § 890.502(d).

⁷ See *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

⁸ 5 U.S.C. § 8129(a).

⁹ 5 U.S.C. § 8702(a).

¹⁰ 5 U.S.C. § 8702(b).

¹¹ 5 U.S.C. § 8707.

¹² 5 U.S.C. § 8707(b)(1).

deductions made will be used to withhold premiums from his or her compensation payments.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

The record reveals that, when appellant retired from the employing establishment on January 1, 2005 she was entitled to basic and optional life insurance coverage as well as health insurance benefits. The record establishes that \$833.74, in premiums for health benefits, \$73.39, in premiums for basic life insurance and \$186.32 in premiums for optional life insurance were not deducted for the period January 1 to October 1, 2005. Thus, an overpayment was created by the underdeduction of premiums for the health benefits and the life insurance appellant elected. Appellant elected to continue receiving health insurance after she retired and is responsible for the entire amount of the health benefits premiums not deducted from her compensation benefits.¹⁵ When an underholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation to appellant because the Office must pay the full premium to OPM upon discovery of the error.¹⁶ Inasmuch as appellant elected post-retirement insurance benefits as a compensationner and submitted no evidence showing that she wanted to convert the basic life insurance or cancel the optional life insurance, she is responsible for the basic life insurance and optional life insurance premiums not deducted from her compensation benefits.¹⁷ Therefore, the Office properly determined that appellant received a \$1,093.45 overpayment.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines.¹⁸ These statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."¹⁹ Since the Office found appellant to be without fault in the matter of the \$1,093.45 overpayment, then, in accordance with section

¹³ 5 U.S.C. § 8706(b).

¹⁴ 5 U.S.C. § 8707(d); *see Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁵ *See supra* notes 5 through 7 and accompanying text.

¹⁶ 5 C.F.R. § 872.401(h); *Calvin W. Scott*, 39 ECAB 1031, 1036 (1988).

¹⁷ *See Glen B. Cox*, 42 ECAB at 708 (finding that appellant must pay for life insurance premiums not deducted from compensation benefits after separation from civil service employment).

¹⁸ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁹ 5 U.S.C. § 8129(b).

8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.²⁰

Section 10.436 of the Office's regulation²¹ provides that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) [t]he beneficiary from whom [it] seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and (b) [t]he beneficiary's assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics.²² An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed expenses by more than \$50.00.²³

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.²⁴

Section 10.438 of the Office's regulations provides:

“(a) 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.

²⁰ Appellant argued that the overpayment should be waived because she was not found to be at fault in its creation but she would only be entitled to such waiver if it were shown, under the standards described below, that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

²¹ 20 C.F.R. § 10.436 (1999).

²² An individual's assets must exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent plus \$960.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1) (October 2004).

²³ See *Leticia C. Taylor*, 47 ECAB 198, 203 (1995).

²⁴ 20 C.F.R. § 10.437. The standard for determining whether an individual would experience severe financial hardship attempting to repay the debt is the same for determining whether recovery would defeat the purpose of the Act.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”²⁵

ANALYSIS -- ISSUE 2

The Office properly determined that appellant did not establish entitlement to waiver of the overpayment under the relevant standards. It advised her regarding her responsibility to submit financial information in support of a waiver request, but appellant did not provide the requested financial information within the appropriate time period to show that she was entitled to waiver of the overpayment. As noted above, failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.²⁶

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of Title 20 of the Code of Federal Regulations provides in pertinent part:

“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 the 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.”²⁷

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$200.00 from appellant’s compensation payments every 28 days, the Office took into consideration any submitted financial information as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Therefore, the Office properly required repayment of the overpayment by deducting \$200.00 from her compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received a \$1,093.45 overpayment of compensation for the period January 1 to October 1, 2005. The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment and that it properly required

²⁵ 20 C.F.R. § 10.438.

²⁶ See *supra* note 25 and accompanying text.

²⁷ 20 C.F.R. § 10.441(a); see *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

repayment of the overpayment by deducting \$200.00 from her continuing compensation every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 7, 2005 decision is affirmed.

Issued: October 20, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board