

On January 28, 2000 appellant, then a 39-year-old federal officer, filed a traumatic injury claim alleging that on January 18, 2000 he turned his head sharply to grab a large box of keys to issue to the staff and pinched a nerve down his right shoulder and neck, and hurt his right arm and hand. The Office accepted appellant's claim for cervical disc displacement C5-6 on March 13, 2000. It was later expanded to include temporomandibular joint disorder. The Office

paid appropriate compensation and medical benefits. By letter dated November 25, 2003, the Office informed appellant that an overpayment had been created in the amount of \$4,584.01. The Office noted that this overpayment occurred because from April 9, 2000 through October 4, 2003 the Office did not deduct the basic life and postretirement life insurance. On December 20, 2003 appellant requested a prerecoupment hearing and submitted financial documentation in support thereof. The hearing was held on November 15, 2004.

By decision dated February 14, 2005, the hearing representative remanded the case as it found that the Office failed to provide sufficient documentation in support of the amount of the overpayment.

On February 27, 2006 the Office issued a preliminary determination of an overpayment in the amount of \$2,682.59 for the period April 9, 2000 through October 4, 2003, for which he was found to be without fault. The Office noted that, for the period April 9, 2000 to December 31, 2002, basic life insurance premiums in the amount of \$486.17 should have been deducted.¹ For the period January 1 to October 4, 2003, the Office found that \$130.59 basic life premiums were underdeducted.² Accordingly, the Office found that an underdeduction existed of \$616.76 for basic life premiums. With regard to postretirement life insurance, the Office found that there was an underdeduction for the period April 9, 2000 through January 11, 2003 of \$1,363.59.³ The Office further found an underdeduction of \$702.24 for the period January 12 through October 4, 2003 which made a total underdeduction of postretirement life insurance in the amount of \$2,065.83.⁴ When adding the \$2,065.83 amount for underdeduction of postretirement life insurance to the \$616.76 amount for underdeduction of basic life premiums, the total amount that was not deducted from appellant's benefits was \$2,682.59, which the Office found to be the amount of the overpayment. Appellant did not file a response and on March 30, 2006 the Office issued a decision finalizing the overpayment in the amount of \$2,682.59.

LEGAL PRECEDENT -- ISSUE 1

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

¹ From April 9, 2000 to December 31, 2002 basic life premiums should have been deducted at the rate of \$6.82 biweekly. The Office calculated 71.2858 pay periods multiplied by \$6.82 amounted to \$486.17 basic life premiums that should have been deducted for this time period.

² From January 1, 2003 through October 4, 2003 basic life premiums should have been deducted at a rate of \$6.60 biweekly multiplied by 19.7858 pay periods for a total of \$130.59.

³ The Office noted that from April 9, 2000 through January 11, 2003 was 33 months. Deductions should have been made monthly in the amount of \$41.36. Multiplying 33 months by \$41.36 equals \$1,363.59 that should have been deducted from appellant's compensation checks.

⁴ For the period January 12 through October 4, 2003, a period of 8.78 months, the Office calculated that deductions should have been made in the amount of \$80.52 a month, for a total of \$706.96. However, the Office computer calculated the amount to be \$702.24, and the Office used this amount.

or more of the options.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.⁷ While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.⁸ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status. If the compensationner 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.⁹ 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 Office of Personnel Management (OPM) upon discovery of the error.¹⁰

ANALYSIS -- ISSUE 1

The record establishes that there was an underdeduction of \$616.76 for failure of the Office to properly deduct basic life insurance premiums from April 9, 2000 through October 4, 2003. The record also establishes that there was a failure of the Office to properly deduct postretirement life insurance from April 9, 2000 through October 4, 2003 in the amount of \$2,065.83. Thus, an overpayment was created by the underdeduction of premiums for life insurance and postretirement life insurance. When an underwithholding 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.¹¹ Therefore, the Office properly found an overpayment in the amount of \$2,682.59.

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.¹² 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.¹³

⁵ 5 U.S.C. § 8702(a).

⁶ 5 U.S.C. § 8702(b).

⁷ 5 U.S.C. § 8707.

⁸ 5 U.S.C. § 8707(b)(1).

⁹ 5 U.S.C. § 8706(b).

¹⁰ 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).

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

¹² See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹³ 5 U.S.C. § 8129(b).

Section 10.436 of the Office's regulations¹⁴ 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) the beneficiary from who 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) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics.¹⁵ 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 \$50.00.¹⁶

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.¹⁷

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 be used to determine the repayment schedule, if necessary.

“(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.”¹⁸

ANALYSIS -- ISSUE 2

The Office properly determined that appellant did not establish entitlement to waiver of the overpayment under the relevant standards. It advised him regarding his 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 he was entitled to waiver of the overpayment. As noted above, failure to submit the requested information within

¹⁴ 20 C.F.R. § 10.436.

¹⁵ 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 based 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).

¹⁶ See *Leticia C. Taylor*, 47 ECAB 198, 203 (1995).

¹⁷ 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.

¹⁸ 20 C.F.R. § 10.438.

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.

CONCLUSION

The Board finds that the Office properly found an overpayment in the amount of \$2,682.59 and properly acted within its discretion in denying waiver of this overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2006 is affirmed.

Issued: January 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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