

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

M.R., Appellant

and

**DEPARTMENT OF LABOR, EMPLOYMENT
STANDARDS ADMINISTRATION, Denver, CO,
Employer**

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**Docket No. 09-803
Issued: November 20, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2009 appellant filed a timely appeal from a December 31, 2008 merit decision of the Office of Workers' Compensation Programs finding that she received an overpayment in the amount of \$3,687.03 for which she was not at fault, declined to waive the recovery and set a repayment schedule. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,687.03 during the period February 18, 2006 to October 25, 2008 when life insurance premiums for basic and optional life insurance were incorrectly deducted and no deductions for postretirement life insurance were deducted from her compensation; (2) whether the Office properly denied waiver of the recovery of the overpayment; and (3) whether the Office properly set the rate of recovery as \$300.00 per month.

FACTUAL HISTORY

On July 30, 2003 appellant, then a 42-year-old claims examiner, filed a traumatic injury claim alleging that on July 10, 2003 she first realized her depression, anxiety and aggravation of her migraine headaches was employment related. The Office accepted the claim for major depression and post-traumatic stress disorder and placed appellant on the periodic rolls for temporary total disability by letter dated June 1, 2004.

In an October 21, 2008 letter, the Office of Personnel Management (OPM) informed the Office that appellant elected to receive benefits under the Federal Employees' Compensation Act. It reported that appellant elected to receive basic life insurance, optional life insurance and postretirement life insurance based on a salary rate of \$53,205.00. The start date for beginning postretirement life insurance was identified as February 18, 2006 and "[c]ompensation commencing date" was the start date identified for both basic life and optional life insurance.

In a letter dated November 3, 2008, the Office informed appellant that, beginning October 26, 2008, deductions for her life insurance premiums would be deducted. Appellant was informed that the deductions would be \$54.60 for optional life, \$16.80 for basic life and \$94.08 for postretirement. The Office noted that these changes were effective February 18, 2006, the date she made her life insurance elections when she filed for OPM retirement. It informed appellant that she would be notified of any overpayment due to incorrect withholding of life insurance premiums at a later date.

The record also contains a computer worksheet and printouts dated November 3, 2008 regarding the calculation of the overpayment.

In a November 4, 2008 overpayment calculation sheet, the Office noted that during the period February 18, 2006 to October 25, 2008 that \$604.80 should have been deducted for basic life insurance, \$1,965.60 should have been deducted for optional life insurance and \$3,386.88 should have been deducted for postretirement life insurance. It noted that \$2,270.25 had been deducted during this period for basic life insurance and optional life insurance. Subtracting what appellant owed from what she actually paid resulted in a total overpayment of \$3,687.03 (\$5,957.28 - \$2,270.25).

By letter dated November 12, 2008, the Office informed appellant that an overpayment had been created in the amount of \$3,687.03 for the period February 18, 2006 to October 25, 2008 because it did not correctly deduct amounts for basic, optional and postretirement life insurance. It noted that it should have deducted \$604.80 for basic life insurance, \$1,965.60 for optional life insurance and \$3,386.88 for postretirement basic life insurance. Totaling these amounts resulted in a total of \$5,957.28 which should have been deducted. The Office then stated that it deducted \$2,270.25 for basic and optional life insurance during this period resulting in a total overpayment of \$3,687.03. It noted that appellant was without fault in the creation of the overpayment. In an attached memorandum to file, the Office noted that appellant did not file a response.

By decision dated December 31, 2008, the Office finalized the overpayment in the amount of \$3,687.03 for the period February 16, 2006 to October 25, 2008 based on the lack of

deduction for postretirement life insurance and underdeductions for basic and optional life insurance. Although it found that appellant was without fault in the creation of the overpayment, it further found that waiver of the recovery of the overpayment was not warranted, as appellant did not respond to the preliminary determination. The Office set a monthly repayment amount of \$300.00 beginning September 28, 2008.

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 or more of the options.¹ The coverage for basic life is effective unless waived² and premiums for basic and optional life coverage are withheld from the employee's pay.³

The Act⁴ and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances⁵ and may also retain the optional life insurance.⁶ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.⁷ If the compensationner chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationner was an employee will be used to withhold premiums from his or her compensation payments.⁸ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.⁹

ANALYSIS -- ISSUE 1

The evidence establishes that the Office should have been deducting premiums for postretirement basic life insurance benefits since February 16, 2006, pursuant to the instructions from OPM. However, it did not begin deducting postretirement basic life until October 26, 2008, and therefore an overpayment of compensation was created. Payment records also show that basic life and optional life insurance premiums were underdeducted for the period February 16, 2006 to October 25, 2008. The Office properly noted that appellant paid \$2,270.25 for the period February 16, 2006 to October 25, 2008 whereas appellant owed \$8,458.52 for this

¹ 5 C.F.R. § 870.201.

² *Id.* at § 870.204(a).

³ *Id.* at § 870.401(a).

⁴ *Id.* at §§ 8101-1893.

⁵ *Id.* at § 870.701, subpart G.

⁶ *Id.* at § 871.201, subpart B; 870.201, subpart B; 873.203, subpart B

⁷ *Id.* at § 870.501.

⁸ *Id.*

⁹ *Scherri L. Stanley*, 53 ECAB 433 (2002).

time period. The difference between these two figures was \$3,687.03, which was the amount that the Office properly found it had overpaid appellant. Accordingly, the Board finds that the Office's underwithholding of the basic life and optional insurance premiums and the failure to deduct premiums for postretirement life insurance created an overpayment of compensation in the amount of \$3,687.03 for the period February 16, 2006 to October 25, 2008.

LEGAL PRECEDENT -- ISSUE 2

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 an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "Adjustment or recovery 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 the Act or would be against equity and good conscience."¹⁰

Office regulations, at 20 C.F.R. § 10.438, state:

"(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.

"(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."¹¹

ANALYSIS -- ISSUE 2

Although the Office found appellant without fault in creating the \$3,687.03 overpayment, she bears responsibility for providing the financial information necessary to support a request for waiver. It requested that she provide financial information and submit any request for waiver within 30 days of the preliminary overpayment determination. Appellant did not respond within the 30-day time period. The Office noted that her failure to submit the requested information would result in the denial of waiver of recovery of the overpayment. Appellant failed to respond within 30 days, as requested by the Office, under the implementing federal regulations, the Board finds that the Office properly denied waiver of recovery of the overpayment pursuant to 20 C.F.R. § 10.438(b).¹²

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at § 10.438(b) provides that failure to submit requested information within 30 days shall result in the denial of waiver of an overpayment. See *R.W. (A.T.)*, 59 ECAB ____ (Docket No. 07-1845, issued December 7, 2007); *Madelyn Y. Grant*, 57 ECAB 533 (2006).

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. Section 10.441(a) of the regulations provides:

“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.”¹³

ANALYSIS -- ISSUE 3

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, she failed to timely complete the financial documents. In cases where the claimant is being paid compensation on the periodic rolls and the claimant does not respond to the preliminary overpayment decision, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible.¹⁴ Furthermore, without the appropriate financial documentation or overpayment questionnaire as required by 20 C.F.R. § 10.441, the Office was unable to consider his financial circumstances. The Board finds that the Office did not abuse its discretion in following its regulations and deducting \$300.00 every four weeks from her continuing compensation payments.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment. The Board further finds that the Office properly denied waiver of the recovery of this overpayment and properly set the rate of recovery of the overpayment at \$300.00 from continuing compensation payments.

¹³ 20 C.F.R. § 10.441.

¹⁴ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (October 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 31, 2008 is affirmed.

Issued: November 20, 2009
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