



establishment in 1991. In an “Option B Election Form” signed on December 6, 2004, appellant elected to freeze all of his Option B life insurance at its value when he turned 65 years old.<sup>1</sup>

In a June 8, 2009 worksheet, Tim Cooper, an Office benefits technician, provided calculations showing a \$3,689.38 overpayment of compensation. He indicated that mistakes in withholding life insurance premiums resulted in amounts of compensation being owed to appellant and amounts which constituted overpayments of compensation to appellant. Mr. Cooper asserted that appellant was owed \$76.82 because between June 26, 1994 and October 30, 2004 improper figures were used for basic life insurance premiums. Appellant was owed \$567.60 because between September 4, 2005 and December 20, 2008 the Office improperly deducted basic life insurance premiums as he was over 65 years old during this period. Mr. Cooper claimed that appellant received a \$663.53 overpayment because basic life insurance premiums were not deducted between June 1, 1991 and June 25, 1994. Appellant was owed \$879.84 because between September 4, 2005 and April 11, 2009 postretirement “0 percent reduction premiums” were deducted instead of “50 percent reduction premiums.” He received a \$1,148.16 overpayment because a “postretirement under deduction of premiums” was made between June 26, 1994 and June 15, 2002. Mr. Cooper asserted that appellant received a \$3,402.05 overpayment because “Optional B freeze payments” were not collected between December 1, 2004 and September 3, 2005. To conclude that appellant received a \$3,689.38 overpayment of compensation, Mr. Copper offset the amounts owed to appellant against the amounts found to constitute overpayments of compensation.

In a July 31, 2009 notice, the Office advised appellant of its preliminary determination that he received a \$3,689.38 overpayment of compensation for the period June 1, 1991 to June 25, 1994 “because Optional B freeze premiums were not being collected.” It also made a preliminary determination that he was not at fault in the creation of the overpayment. The Office advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. It requested that appellant complete and return an enclosed financial information questionnaire within 30 days even if he was not requesting waiver of the overpayment.

In a September 1, 2009 decision, the Office determined that appellant received a \$3,689.38 overpayment of compensation and found that the overpayment was not subject to waiver. It indicated that it was attaching a memorandum explaining this decision but no such memorandum was attached.<sup>2</sup>

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<sup>1</sup> Appellant turned 65 years old on October 18, 2004.

<sup>2</sup> Appellant did not submit a completed financial information questionnaire or any other evidence or argument within the allotted time. The Office did not make a formal ruling regarding a payment plan for recovery of the overpayment and this matter is not currently before the Board.

## LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> Section 8129(a) of the Act provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”<sup>5</sup>

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.<sup>6</sup> The coverage for basic life insurance is effective unless waived<sup>7</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>8</sup> While the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee's compensation.<sup>9</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under “compensationeer” status. If the compensationeer 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.<sup>10</sup> 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.<sup>11</sup>

In determining a claimant's entitlement to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>12</sup> Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Id.* at § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *Id.* at § 8702(a).

<sup>7</sup> *Id.* at § 8702(b).

<sup>8</sup> *Id.* at § 8707.

<sup>9</sup> *Id.* at § 8707(b)(1).

<sup>10</sup> *Id.* at § 8706(b).

<sup>11</sup> 5 U.S.C. § 8707(d); *see Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>12</sup> 5 U.S.C. § 8124(a) provides: “The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office “shall contain findings of fact and a statement of reasons.”

allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”<sup>13</sup> These requirements are supported by Board precedent.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office did not meet its burden of proof to show that appellant received a \$3,689.38 overpayment of compensation.

In a July 31, 2009 notice, the Office advised appellant of its preliminary determination that he received a \$3,689.38 overpayment of compensation for the period June 1, 1991 to June 25, 1994 “because Optional B freeze premiums were not being collected.” However, this extremely brief explanation of the creation of the overpayment would not adequately apprise appellant of how the Office believed that the claimed overpayment was created. Given the Office’s failure to explain how the overpayment occurred, appellant would not understand the precise defect of his claim and the kind of evidence which would tend to overcome it.

It appears that the Office’s calculation of the claimed overpayment was far more complicated. The Office appears to have based its finding of an overpayment on a series of mistakes made in deducting life insurance premiums, some of which resulted in overpayments to appellant and some of which resulted to amounts being owed to appellant. The record contains a June 8, 2009 worksheet in which Mr. Cooper, an Office benefits technician, provided calculations ostensibly showing a \$3,689.38 overpayment of compensation. There is no indication that appellant was provided with this worksheet in connection with the Office’s preliminary overpayment determination or that he otherwise was apprised of the reasoning contained therein.<sup>15</sup>

For these reasons, the Office did not meet its burden of proof to show that appellant received a \$3,689.38 overpayment of compensation. As noted above, its burden of proof

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<sup>13</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>14</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

<sup>15</sup> Moreover, it should be noted that the bases for a number of the calculations contained in the worksheet are not adequately explained or supported with documentation. For example, Mr. Copper claimed that appellant received a \$663.53 overpayment because basic life insurance premiums were not deducted between June 1, 1991 and June 25, 1994. The record reveals that appellant retired in 1991 but it does not contain any documents showing whether or when he elected to have basic life insurance coverage after his retirement. Mr. Cooper asserted that appellant received a \$1,148.16 overpayment because a “postretirement under deduction of premiums” was made between June 26, 1994 and June 15, 2002. However, there is no explanation of the nature of these premiums or why it was felt that they were not fully deducted for this period. Mr. Cooper stated that appellant received a \$3,402.05 overpayment because “Optional B freeze payments” were not collected between December 1, 2004 and September 3, 2005, but the Office’s preliminary overpayment determination indicated that this noncollection occurred between June 1, 1991 and June 25, 1994.

includes providing a given claimant with fact findings and reasoning which would allow the claimant to understand the precise nature of the determination being made by the Office.<sup>16</sup>

**CONCLUSION**

The Board finds that the Office did not meet its burden of proof to show that appellant received a \$3,689.38 overpayment of compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 1, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 16, 2010  
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

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<sup>16</sup> On appeal appellant argued that health problems prevented him from challenging the fact and amount of the claimed overpayment and from providing evidence showing that it should be waived. The Board notes that the evidence of record does not clearly show whether appellant was too ill to respond to the Office's preliminary overpayment determination. Because the Office has not established the existence of an overpayment, it is not necessary to consider whether the Office abused its discretion by refusing to waive recovery of the overpayment.