

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANA M. LAW and DEPARTMENT OF THE NAVY,  
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 01-1706; Submitted on the Record;  
Issued July 3, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant received a \$1,465.28 overpayment of compensation; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to waive recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$150.00 every four weeks from appellant's compensation payments.

The Board finds that appellant received a \$1,465.28 overpayment of compensation.

On October 10, 1996 appellant, then a 43-year-old insulation worker, sustained an employment-related low back strain and aggravation of a herniated nucleus pulposus at L4-5. She received compensation from the Office for periods of disability. Appellant was terminated from the employing establishment effective March 29, 1997 due to the expiration of her full-time seasonal temporary appointment.<sup>1</sup> By decision dated and finalized April 10, 2001, an Office hearing representative finalized the Office's preliminary determination that appellant received a \$1,465.28 overpayment of compensation and that the overpayment was not subject to waiver.<sup>2</sup> The Office hearing representative determined that the overpayment should be repaid by deducting \$150.00 from appellant's compensation payments every four weeks.

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

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<sup>1</sup> Appellant continued to receive compensation from the Office after her termination from the employing establishment.

<sup>2</sup> In its August 31, 2000 preliminary overpayment determination, the Office found that appellant was not at fault in the creation of the overpayment. A hearing was held on January 18, 2001 before an Office hearing representative.

more of the options.<sup>3</sup> The coverage for basic life is effective unless waived<sup>4</sup> and premiums for basic and optional life coverages are withheld from the employee's pay.<sup>5</sup>

The Federal Employees' Compensation Act and its implementing regulations provide that an employee entitled to disability compensation benefits may continue her basic life insurance coverage without cost under certain conditions<sup>6</sup> and may also retain the optional life insurance.<sup>7</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.<sup>8</sup> If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments.<sup>9</sup> Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.<sup>10</sup>

In this case, the record reveals that when appellant was separated from the employing establishment on March 29, 1997, she was entitled to basic life insurance and optional life insurance coverage. The evidence of record shows that appellant elected to continue her basic life insurance and optional life insurance coverage after March 29, 1997.<sup>11</sup> However, the basic life insurance and optional life insurance premiums were not regularly deducted from appellant's compensation payments for the period March 30, 1997 to February 26, 2000.<sup>12</sup> The amount of life insurance premiums, which were not deducted, totaled \$1,465.28. Thus, an overpayment was created by the underdeduction of premiums for the insurance appellant elected.

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<sup>3</sup> Part 870 -- Basic Life Insurance, subpart B -- Coverage; *see* 5 C.F.R. § 870.201.

<sup>4</sup> 5 C.F.R. § 870.204(a).

<sup>5</sup> 5 C.F.R. § 870.401(a).

<sup>6</sup> 5 C.F.R. § 870.701, subpart G.

<sup>7</sup> 5 C.F.R. §§ 871.201, subpart B; 872.201, subpart B; 873.203, subpart B.

<sup>8</sup> 5 C.F.R. § 870.501.

<sup>9</sup> 5 C.F.R. § 872.401, subpart D.

<sup>10</sup> *Glen B. Cox*, 42 ECAB 703, 708 (1991).

<sup>11</sup> Appellant asserted that the employing establishment ended her life insurance coverage after March 29, 1997 and refused her requests to reinstate it. However, the evidence of record clearly shows that appellant's basic life insurance and optional life insurance coverage continued after March 29, 1997.

<sup>12</sup> Appellant submitted letters from the Office of Personnel Management which she believed supported her contention that she was entitled to free life insurance benefits after she was terminated effective March 29, 1997. The Board has reviewed these letters and notes that they do not support such a contention. In fact, they provide support for the finding that appellant continued to have basic life insurance and optional life insurance coverage after March 29, 1997. Appellant asserted that 5 U.S.C. § 8706(c) and a portion of the Office procedure manual dictated that she was entitled to free life insurance benefits after her March 29, 1997 termination. However, these provisions refer to certain circumstances when an employee is entitled to free coverage *prior* to the time he or she stops working for a given employing establishment; *see* 5 U.S.C. § 8706(c); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.11 (July 1993).

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 the Office of Personnel Management upon discovery of the error.<sup>13</sup> Here, the Office failed to deduct the proper amounts from the time after appellant was terminated effective March 29, 1997 until February 26, 2000. 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.<sup>14</sup> For these reasons, the Office properly determined that appellant received a \$1,465.28 overpayment.

The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.<sup>15</sup> 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."<sup>16</sup> Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 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.<sup>17</sup>

Section 10.436 of the Office's regulations<sup>18</sup> 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 [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) [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." Section 10.437<sup>19</sup> states that recovery of an overpayment is also considered to

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<sup>13</sup> 5 C.F.R. § 872.401(h); *Calvin W. Scott*, 39 ECAB 1031, 1036 (1988).

<sup>14</sup> 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).

<sup>15</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>16</sup> 5 U.S.C. § 8129(b).

<sup>17</sup> 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.

<sup>18</sup> 20 C.F.R. § 10.436.

<sup>19</sup> 20 C.F.R. § 10.437.

be against good conscience if the 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.

Section 20 C.F.R. § 10.438 states:

“(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.”

Although appellant was provided with the opportunity, she submitted no financial evidence to establish that recovery of the overpayment would defeat the purpose of the Act. There is a presumption that a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address in due course.<sup>20</sup> There is no evidence to show that the Office’s request for financial information was not properly addressed and mailed and, therefore, it is presumed it reached appellant’s mailing address. Absent evidence documenting appellant’s financial status, the Office cannot determine whether appellant is entitled to waiver and waiver cannot be granted.<sup>21</sup> Further, appellant has not shown that she relinquished a valuable right or changed her position for the worse in reliance on the excess compensation she received while working. Accordingly, the Office properly determined that appellant was not entitled to a waiver of the overpayment in this case.

The Board further finds that the Office properly required repayment of the overpayment by deducting \$150.00 every four weeks from appellant’s compensation payments.

Section 10.441<sup>22</sup> provides, 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. Since appellant did not submit any financial data, there is no sufficient information for the Board to perform an analysis of the reasonableness of the recovery rate of \$150.00 every four weeks. Appellant has, therefore, not shown that the Office abused its discretion in withholding \$150.00 every four weeks from her monthly compensation payments.

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<sup>20</sup> *Marlon G. Massey*, 49 ECAB 650, 652 (1998).

<sup>21</sup> *Id.*

<sup>22</sup> 20 C.F.R. § 10.441.

The April 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 3, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member