

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

SANDRA D. FANNING, Appellant

and

**U.S. POSTAL SERVICE, REMOTE ENCODING
CENTER, Sherwood, AR, Employer**

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**Docket No. 04-1796
Issued: December 6, 2004**

Appearances:
Sandra D. Fanning, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 12, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 8, 2004 finding an overpayment of compensation and denying waiver. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the overpayment issues in this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$475.20 because the Office failed to deduct premiums for basic life insurance for the period October 8, 2000 through January 24, 2004; (2) whether the Office properly denied waiver of recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$179.00 per month from appellant's continuing compensation benefits. On appeal, appellant contends that she timely requested waiver and submitted evidence in support of her request.

FACTUAL HISTORY

On April 24, 2000 appellant, then a 28-year-old data conversion operator, filed a claim for a traumatic injury arising from a physical altercation with a coworker. The Office accepted appellant's claim for a strain of the right leg, contusions to the right arm and hand and post-traumatic stress disorder. She stopped work on April 24, 2000 and did not return.

On October 17, 2000 the Office informed appellant that she would receive regular payments of disability compensation on the periodic rolls effective October 8, 2000 with deductions for health benefits and optional life insurance. The Office did not include deductions for basic life insurance premiums in calculating her monthly compensation on the periodic rolls.¹

In a worksheet dated March 2, 2004, the Office calculated that appellant received an overpayment of \$475.20 because it had not deducted premiums for basic life insurance for the period October 8, 2000 through January 24, 2004. The Office obtained the information regarding basic life insurance premiums from a basic life and postretirement basic life worksheet.

On March 5, 2004 the Office notified appellant of a preliminary determination that she had received an overpayment of compensation in the amount of \$475.20 because it failed to deduct premiums for basic life insurance from October 8, 2000 through January 24, 2004. The Office found that she was not at fault in the creation of the overpayment. The Office informed appellant that she should complete the enclosed overpayment recovery questionnaire and submit financial documents in support of a request for waiver of the overpayment within 30 days. Additionally, the Office notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a precoupment hearing.

On March 29, 2004 appellant requested a decision from the Office based on the written evidence and that the overpayment be waived. In support of her request for wavier, she submitted a completed overpayment recovery questionnaire and supporting financial documents, which the Office received on April 6, 2004.

By decision dated April 8, 2004, the Office finalized its determination that appellant received a \$475.20 overpayment because it failed to deduct premiums for basic life insurance from October 8, 2000 through January 24, 2004.² The Office determined that appellant was without fault in creating the overpayment and that she was not entitled to waiver. The Office found that appellant had not responded to its preliminary notification of the overpayment. The Office indicated that it would withhold \$179.00 from appellant's continuing compensation each pay period as repayment of the overpayment.

¹ Computer printouts indicate that the Office did not deduct basic life insurance premiums from appellant's compensation.

² The Office stated at the beginning of its April 8, 2004 that appellant received an overpayment of \$475.00 instead of \$475.20; however, it is apparent from the Office's accompanying memorandum that this is a typographical error.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ When an overpayment has been made to an individual because of an error of fact or law, adjustments shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁴

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.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁷ 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 deductions made will be used to withhold premiums from his or her compensation payments.⁸ 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 upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an injury on April 21, 2000 and paid her compensation for temporary total disability. Although she had authorized deductions for basic life insurance, the Office did not deduct premiums from her compensation for the period October 8, 2000 through January 24, 2004. The Board thus finds that the Office properly determined that this underdeduction constituted an overpayment of compensation.¹⁰

The record contains an overpayment worksheet showing the premium rate schedule for basic life insurance and the effective dates of the premium rates. For the period October 8, 2000 through January 25, 2003, the Office took appellant's adjusted base pay in thousands, multiplied it by the premium rate per thousand in effect for that period and multiplied that by the number of pay periods from October 8, 2000 through January 25, 2003. This showed that the Office should

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ 5 U.S.C. § 8706(b).

⁹ 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁰ *Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004).

have deducted \$334.80 for basic life coverage during that period. Using the same formula, the Office calculated that it should have deducted \$140.40 for basic life coverage from January 26, 2003 to January 24, 2004.¹¹ The Office added these amounts to find a total overpayment of \$475.20. The Board will affirm the April 8, 2004 decision on the amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹² If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless (1) adjustment or recovery of the overpayment would defeat the purpose of the Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹³

Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the 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) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.¹⁴ Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.¹⁵ Recovery of an overpayment is also considered to be against equity and good conscience when any 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.¹⁶

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.¹⁷

The Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the

¹¹ The Office's worksheet calculating the overpayment contained a typographical error regarding the number of pay periods.

¹² 5 U.S.C. § 8129(b); 20 C.F.R. § 10.433(a).

¹³ *Id.* at § 8129(b); 20 C.F.R. § 10.434.

¹⁴ 20 C.F.R. § 10.436.

¹⁵ *Id.* at § 10.437(a).

¹⁶ *Id.* at § 10.437(b).

¹⁷ *Id.* at § 10.438(a).

employee and after completing such investigation as the Office considers necessary with respect to the claim.¹⁸ As the Board's jurisdiction of a case is limited to reviewing that evidence which is before the Office at the time of its final decision,¹⁹ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. Since the Board's decisions are final as to the subject matter appealed,²⁰ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.²¹

ANALYSIS -- ISSUE 2

In this case, the overpayment occurred because the Office failed to deduct premiums for basic life insurance for the period October 8, 2000 through January 24, 2004. Appellant had no reason to know that she was receiving incorrect compensation payments. She is, therefore, without fault in the creation of the overpayment and may be entitled to waiver if recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

The Office found in its April 8, 2004 decision that appellant failed to respond to its March 5, 2004 preliminary determination of overpayment and thus had not submitted the financial information necessary to establish waiver. A review of the record, however, reveals that on April 6, 2004 the Office received a request for waiver from appellant, a completed overpayment recovery questionnaire and supporting financial information.

As the Board's jurisdiction of a case is limited to reviewing that evidence which is before the Office at the time of its final decision,²² it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. Since the Board's decisions are final as to the subject matter appealed,²³ it is crucial that all evidence which was properly submitted to the Office prior to the time of issuance of its final decision be addressed.²⁴ This is particularly important in this appeal where, as noted above, appellant submitted a completed overpayment recovery questionnaire and requested waiver but there is no indication that this was considered by the Office before issuing its final decision. As the Office did not consider the evidence that it received on April 6, 2004 in reaching its April 8, 2004 decision, the Board cannot review such evidence for the first time on appeal.²⁵ The Board finds that the case must be remanded for the Office to consider appellant's overpayment recovery questionnaire, financial information and request for waiver. Following this and such other

¹⁸ 5 U.S.C. § 8124(a)(2); 20 C.F.R. §§ 10.125, 126.

¹⁹ 20 C.F.R. § 501.2(c).

²⁰ *Id.* at § 501.6(c).

²¹ *See William A. Couch*, 41 ECAB 548, 553 (1990).

²² 20 C.F.R. § 501.2(c).

²³ *Id.* at § 501.6(c).

²⁴ *See William A. Couch*, *supra* note 21.

²⁵ *See* 20 C.F.R. § 501.2(c).

development as deemed necessary, the Office shall issue an appropriate merit decision on this aspect of the claim.²⁶

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$475.20 because the Office failed to deduct premiums for basic life insurance for the period October 8, 2000 through January 24, 2004. The Board finds that the case is not in posture for decision on the issue of waiver of the overpayment as the Office failed to consider all the evidence of record prior to issuing its decisions. The Board further finds, in view of its determination on the issue of waiver of the overpayment, that the issue of whether the Office properly found that it should withhold \$179.00 per month from appellant's continuing compensation to recover the overpayment is premature.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 8, 2004 is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

²⁶ In view of its determination on the issue of waiver of the overpayment, the issue of whether the Office properly found that it should withhold \$179.00 per month from appellant's continuing compensation to recover the overpayment is moot.