

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

HELEN R. RAGLAND, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 04-1919
Issued: December 14, 2004**

Appearances:
Helen R. Ragland, pro se
Office of the 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 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 14, 2004, finding that an overpayment of \$922.00 was created, denying waiver of the overpayment and requiring repayment by deducting \$25.00 from her continuing compensation payment every 28 days. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issues of this case.

ISSUES

The issues are: (1) whether the Office properly determined that a \$922.00 overpayment of compensation was created during the period June 2, 1998 to July 12, 2003 by the failure to deduct basic life insurance premiums; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly required repayment by deducting \$25.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 22, 1998 appellant, then a 53-year-old distribution clerk, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that she sustained injuries as a witness to a shooting at work on April 17, 1998. The Office accepted the claim for post-traumatic stress disorder and she began receiving compensation for wage loss as of June 2, 1998. The compensation payments did not make a deduction for basic life insurance, although deductions were made for optional life insurance.

In a fiscal payment worksheet dated February 10, 2004, the Office indicated that basic life insurance premiums had not been deducted from compensation payments for the period June 2, 1998 to July 12, 2003. The worksheet indicated that the basic life insurance premium was \$6.00. The Office indicated that the following amounts should have been deducted: for the period June 2, 1998 to April 24, 1999, \$13.20 for 12 pay periods or \$158.40, from April 25, 1999 to January 25, 2003, \$12.40 for 49 pay periods or \$607.60, and from January 26 to July 12, 2003, \$12.00 for 13 pay periods or \$156.00.

By letter dated June 4, 2004, the Office advised appellant of a preliminary determination that an overpayment of \$922.00 occurred because basic life insurance premiums were not deducted from June 2, 1998 to July 12, 2003. With respect to the amount of the overpayment, the Office reported the calculations as set forth in the February 10, 2004 worksheet. The Office also made a preliminary finding that appellant was not at fault in creating the overpayment, and advised appellant that she may submit evidence on the issue of waiver of the overpayment.

Appellant requested waiver of the overpayment and submitted an overpayment recovery questionnaire reporting monthly household income of \$3,257.00 and monthly expenses of \$3,296.00. She listed assets totaling \$550.00 and submitted copies of monthly bills.

By decision dated July 14, 2004, the Office finalized its preliminary determination that an overpayment of \$922.00 was created during the period June 2, 1998 to July 12, 2003. The Office denied waiver of the overpayment and stated that the reasons for this decision were explained in an accompanying memorandum. The record contains a memorandum dated July 14, 2004 explaining the basis for finding that appellant was not at fault in creating the overpayment. The memorandum did not discuss the issue of waiver. With respect to recovery of the overpayment, the decision indicated that \$25.00 would be withheld from appellant's continuing compensation payments.

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

¹ 5 U.S.C. § 8702(a).

² 5 U.S.C. § 8702(b).

basic and optional life coverages are withheld from the employee's pay.³ 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.⁴ 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 upon discovery of the error.⁵

ANALYSIS -- ISSUE 1

In the present case, appellant was responsible for basic and optional life insurance premiums as appellant did not waive coverage. The compensation payments issued to appellant indicate that, while optional life insurance premiums were deducted, the Office failed to deduct for basic life insurance. The failure to deduct premiums for basic life insurance resulted in an overpayment of compensation in this case.

With respect to the amount of the overpayment, however, the Office did not provide a sufficient explanation as to how the amount was calculated. The amount of the overpayment is determined by calculating the proper deduction from each 28-day compensation payment and multiplying by the number of compensation payments issued for a particular period. The Office calculated the overpayment in terms of 14-day pay periods, without providing adequate explanation for its calculations. According to the Office, from January 26 to July 12, 2003 basic life insurance premiums totaled \$12.00 every 14-day pay period,⁶ which would result in a basic life insurance premium of \$24.00 for a 28-day compensation payment. But the evidence of record appeared to indicate that \$12.00 represented the deduction for a 28-day compensation payment. On the February 10, 2004 worksheet the Office indicated that the basic life premium was \$6.00. A compensation payment from April 2004 shows \$6.00 per pay period as the basic life premium, and \$12.00 was deducted from appellant's 28-day compensation payment for basic life insurance.

Since the Office did not clearly explain how the amount of the overpayment was calculated, the case will be remanded to the Office for a proper explanation. For any given period the Office should determine the proper deduction and the number of compensation payments issued for that period. The decision should clearly document how the amount of the overpayment for failure to deduct basic life insurance premiums was calculated in this case.

³ 5 U.S.C. § 8707.

⁴ 5 U.S.C. § 8706(b).

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

⁶ The Office multiplied \$12.00 by the 13 two-week pay periods from January 26 to July 12, 2003 for an overpayment of \$156.00 during this period.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Federal Employees' Compensation Act⁷ provides: "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."⁸ Since the Office found appellant to be without fault in the creation of the overpayment, the Office may only recover the overpayment if recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

Section 10.436 provides that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary "needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses," and, also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.⁹ For waiver under the "defeat the purpose of the Act" standard, appellant must show that she needs substantially all of her current income to meet current ordinary and necessary living expenses, and that her assets do not exceed the resource base.¹⁰

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; or (b) 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.

ANALYSIS -- ISSUE 2

The Office stated in its July 14, 2004 decision that the reasons for the denial of waiver of the overpayment were provided in an accompanying memorandum. The July 14, 2004 memorandum contained in the record does not provide an explanation of the waiver determination or address the issues raised under 5 U.S.C. § 8129(b). It was limited to a review of the reasons for a finding that appellant was not at fault in creating the overpayment. The case will be remanded for a decision that properly assesses the financial evidence submitted and makes an appropriate determination on whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. In view of the Board's findings as to the amount of the overpayment and waiver, the Board will not address the issue of recovery of the overpayment by deducting \$25.00 from appellant's continuing compensation.

⁷ 5 U.S.C. §§ 8129(b).

⁸ 5 U.S.C. § 8129(b).

⁹ Office procedures provide that the assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or dependent plus \$600.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200 (September 1994).

¹⁰ See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

CONCLUSION

The Board finds that an overpayment of compensation was created by the failure to deduct basic life insurance premiums. The case is remanded to the Office for a proper determination as to the amount of the overpayment and whether appellant is entitled to waiver of the overpayment. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2004 is affirmed with respect to fact of overpayment. The decision is set aside with respect to amount, waiver and rate of recovery, and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: December 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member