

On April 17, 1998 appellant, then a 42-year-old distribution window clerk, witnessed the murder of a coworker at the employing establishment, injuring her head and right leg when she fell to the floor to avoid gunfire. The Office accepted her claim for post-traumatic stress disorder, closed-head injury and right leg contusion as a result of the incident.

Appellant had ostensibly signed a life insurance election form prior to the date of injury, authorizing deductions for basic life insurance and optional additional coverage.¹ By letter dated June 15, 1998, the Office informed appellant of her entitlement to compensation benefits and advised her that she was contractually responsible for life insurance premiums, whether or not a deduction was reflected on the proposed benefit statement. In fact, the deduction for basic life insurance was posted as “\$0.00.”

Appellant was approved for disability retirement effective June 27, 2003 and was advised by the Office of Personnel Management (OPM) on January 9, 2004 that she had basic life insurance coverage until age 65 and post-retirement basic coverage after age 65. Numerous computer printouts indicate that the Office deducted premiums from appellant’s compensation for optional additional insurance but not for her basic life coverage. Those deductions did not begin until February 21, 2004.

On June 7, 2004 the Office made a preliminary finding that an overpayment of \$922.00 arose because the Office did not deduct premiums from appellant’s compensation for basic life insurance from June 2, 1998 to January 24, 2004. The Office found that appellant was not at fault in the creation of the overpayment.

Appellant requested a waiver of the overpayment. In support of her request, she submitted a personal statement in which she stated her belief that she should not be required to repay the debt because she was not at fault and because doing so would create serious hardship for her family. Appellant also submitted an overpayment recovery questionnaire, which reflected that she supports five other family members who reside with her; has a total monthly income of \$3,304.04 and total monthly expenses of \$3,014.00; that she has fixed debts of \$6,754.00; and that she has total liquid assets in the amount of \$5.11. Appellant also submitted a bank statement dated April 23, 2004, indicating a balance of \$13.33 and copies of various monthly bills reflecting her expenses.

In a decision dated July 15, 2004, the Office finalized its preliminary findings on the fact and amount of overpayment. The Office found that, though appellant was without fault, the circumstances of her case did not warrant waiver. The Office advised that the overpayment would be recovered at the rate of \$30.00 per month with interest accruing until the debt is absorbed on December 23, 2006.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act² 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.³ When an overpayment has been made to an individual

¹ It should be noted that no life insurance election form appears in the record.

² 5 U.S.C. §§ 8101 *et seq.*

³ *See id.* at § 8102(a).

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 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 Upon separation from the employing establishment, an employee may choose to continue basic and optional life insurance coverage, in which case 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 OPM upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation of \$922.00 due to the lack of deduction for basic life insurance premiums from June 2, 1998 to January 24, 2004. Appellant sustained an injury in the performance of duty on April 17, 1998 and received compensation for her disability. Although she had apparently authorized deductions for basic life insurance, the Office deducted no premiums from her compensation for basic life or post-retirement basic life coverage. This error created an overpayment of compensation to appellant. The Office should have deducted premiums for basic life insurance when compensation for the employment injury first began.

The record contains an overpayment worksheet showing the premium rate schedule for basic life and post-retirement basic life. To determine the overpayment, the Office took appellant's adjusted base pay in thousands, multiplied it by the premium rate per thousand in effect at the time the payments were made and multiplied that by the number of pay periods during that same time frame. The calculations revealed that the Office should have deducted \$158.40 for basic life coverage for the period June 2, 1998 to April 24, 1999; \$607.60 for the period April 25, 1999 to January 25, 2003; and \$156.00 for the period January 26, 2003 through January 24, 2004. Thus, the overpayment resulting from the Office's error amounted to \$922.00. The Board will affirm the July 15, 2004 decision on the amount of the overpayment.

⁴ See *id.* at § 8129(a).

⁵ See *id.* at § 8702(a).

⁶ See *id.* at § 8702(b).

⁷ See *id.* at § 8707.

⁸ See *id.* at § 8706(b).

⁹ See *id.* at § 8707(d); see also *Keith H. Maples*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.¹⁴

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.¹⁵

ANALYSIS -- ISSUE 2

Appellant contended in her personal statement that because she was without fault she should not have to make repayments. However, the Act and its implementing regulations are clear that entitlement to waiver is not established solely by a finding that appellant is without fault in creating the overpayment. Rather, such a finding entitles appellant only to the opportunity to establish a basis for granting waiver of the recovery of the overpayment.¹⁶

¹⁰ 20 C.F.R. § 10.433(a) (2003).

¹¹ *See id.* at § 10.434. *See also* 5 U.S.C. § 8707(d).

¹² 20 C.F.R. § 10.436.

¹³ *See id.* at § 10.437(a).

¹⁴ *See id.* at § 10.437(b).

¹⁵ *See id.* at § 10.438(a).

¹⁶ *See James Lloyd Otte, supra* note 9 at 338.

Although the Office found that appellant was without fault in the matter of the overpayment, repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.¹⁷ The financial evidence submitted by appellant indicates that her monthly income exceeded monthly expenses by \$290.00. In that her monthly income exceeds her expenses by more than \$50.00, appellant is not deemed to need substantially all of her current income (including compensation benefits) to meet current ordinary and necessary living expenses¹⁸ and has ample funds available for debt repayment. Therefore, the Office properly concluded that recovery of the overpayment would not cause hardship to appellant or defeat the purpose of the Act.

In *Keith H. Maples*,¹⁹ appellant, due to no fault on his part, had received an overpayment in the amount of \$4,791.17 due to the Office's failure to deduct premiums from his compensation for basic and post-retirement basic life insurance for a period of approximately five years. In denying his request for a waiver, the Board noted that appellant's monthly income exceeded his monthly expenses by \$1,122.00 and concluded that he did not need substantially all of his current income to meet ordinary and necessary living expenses and that recovery of the overpayment would not cause hardship to appellant. Similarly, in *James Lloyd Otte*,²⁰ appellant had received an overpayment in the amount of \$746.95 due to the Office's failure to deduct life insurance premiums. Finding that appellant's monthly income exceeded monthly expenses by more than \$200.00 and concluding, therefore, that he had not shown that he needed substantially all of his income to meet living expenses, the Board denied the request for waiver.²¹ In the instant case, appellant's monthly income exceeded monthly expenses by \$290.00, far in excess of the amount specified in the Federal (FECA) Procedure Manual²² and more than appellant's positive balance in *Otte*. Therefore, she has not shown that she needs substantially all of her income to meet living expenses.

Additionally, recovery of the overpayment is not considered to be against equity and good conscience, since appellant would not experience severe financial hardship in attempting to repay the debt and she made no argument that she gave up a valuable right or changed her position for the worse in reliance on the overpaid compensation. The Board finds that the Office

¹⁷ See *Keith H. Maples*, *supra* note 9.

¹⁸ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.6a(1) (September 1994). ("An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00)).

¹⁹ *Keith H. Maples*, *supra* note 9.

²⁰ *James Lloyd Otte*, *supra* note 9.

²¹ *Id.* at 339.

²² See *supra* note 18.

properly denied waiver of the overpayment and is required by law to recover the debt by decreasing later payments to which appellant is entitled.²³

LEGAL PRECEDENT -- ISSUE 3

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.²⁴

ANALYSIS -- ISSUE 3

Appellant represented in her overpayment recovery questionnaire that her monthly income exceeded monthly expenses by \$290.00. Based on this information and other evidence submitted, the Office determined that she could repay the debt at \$30.00 per month plus interest without great hardship. The Board finds that the Office gave due regard to the relevant factors noted above and did not abuse its discretion in setting a rate of recovery that left appellant with approximately \$260.00 in discretionary income per month. The Board will affirm the Office's July 15, 2004 decision on the issue of the rate of recovery.

CONCLUSION

The Board finds that an overpayment of \$922.00 occurred from June 2, 1998 to January 24, 2004, when the Office neglected to deduct from appellant's compensation premiums for basic life insurance; that the Office properly denied waiver of the overpayment on the grounds that recovery would not defeat the purpose of the Act or be against equity and good conscience; and that the Office did not abuse its discretion in setting the rate of recovery from continuing compensation.

²³ 5 U.S.C. § 8129(a).

²⁴ 20 C.F.R. § 10.441(a) (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member