



## **FACTUAL HISTORY**

This is the second appeal in the present case. In a February 6, 2003 decision, the Board affirmed the Office's decision dated June 19, 2002.<sup>1</sup> The Board determined that the evidence submitted by appellant in support of her application for review did not raise a substantial question as to the correctness of the Office's decision and was insufficient to demonstrate clear evidence of error. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>2</sup>

The record reflects that appellant was enrolled in basic life insurance Option A Standard. In a worksheet dated February 2, 2004, the Office determined that no deduction had been made from appellant's compensation benefits for basic life insurance for the period October 13, 1996 to November 1, 2003, and calculated an overpayment amount of \$700.90.

On February 10, 2004 the Office informed appellant that it had made a preliminary finding that she had been overpaid benefits in the amount of \$700.90. The Office noted that the overpayment occurred because the Office did not deduct basic life insurance premiums from appellant's compensation benefits for the period October 13, 1996 to November 1, 2003. The Office determined that appellant was without fault in the matter of the overpayment. The Office notified appellant that she had the right to submit, within 30 days, evidence or arguments regarding the overpayment and her eligibility for waiver of the overpayment. The Office requested that appellant complete a Form OWCP-20 overpayment recovery questionnaire and submit supporting documents including copies of income tax returns, bank account statements, bills, canceled checks, pay slips and other records to support income and expenses on the overpayment recovery questionnaire.

In a letter dated March 5, 2004, appellant requested waiver of the \$700.90 overpayment. Appellant indicated that she should not be responsible for someone else's mistake. She further advised that she could not afford to repay the overpayment because the majority of her money was used to pay for medication. Appellant submitted an overpayment questionnaire and indicated a total monthly income of \$902.00 and monthly expenses of \$1,273.00. She indicated that she did not own a home, automobile or household furnishings and had \$50.00 in her checking account. Appellant did not submit any supporting documents, specifically income tax returns, bank account statements, bills, cancelled checks, pay slips and other records to support income and expenses.

By decision dated March 19, 2004, the Office found that appellant received a \$700.90 overpayment of compensation from October 13, 1996 to November 1, 2003 for which she was without fault in creating. In an accompanying memorandum, the Office noted that appellant submitted the overpayment questionnaire but failed to provide any supporting documents establishing income and expenses. Therefore, the Office advised that the debt would be

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<sup>1</sup> The Office had previously accepted that appellant sustained aggravation of right carpal tunnel syndrome and authorized right carpal tunnel release.

<sup>2</sup> Docket No. 02-2318 (issued February 6, 2003).

collected by deducting \$70.00 from appellant's continuing compensation every 28 days effective April 17, 2004.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act 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 duty.<sup>3</sup> 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.<sup>4</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>5</sup> The coverage for basic life insurance is effective unless waived<sup>6</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>7</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensationer 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>8</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 Office of Personnel Management (OPM) upon discovery of the error.<sup>9</sup>

### **ANALYSIS**

The record indicates that, while appellant had enrolled in basic life insurance, deductions for basic life insurance were not made from appellant's compensation for the period of October 13, 1996 to November 1, 2003. Consequently, appellant received an overpayment for this period. When an underwithholding 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 OPM upon discovery of the error.<sup>10</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a). See *Keith H. Mapes*, 56 ECAB \_\_\_\_ (Docket No. 03-1747, issued October 20, 2004).

<sup>5</sup> 5 U.S.C. § 8702(a).

<sup>6</sup> 5 U.S.C. § 8702(b).

<sup>7</sup> 5 U.S.C. § 8707.

<sup>8</sup> 5 U.S.C. § 8706(b).

<sup>9</sup> 5 U.S.C. § 8707(d); see *Keith H. Mapes*, *supra* note 4; *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>10</sup> *Id.*

In this case, the Board cannot determine how the Office arrived at the amount of overpayment. The Office determined that there was an overpayment of compensation in the amount of \$700.90 for the period October 13, 1996 to November 1, 2003. The overpayment worksheet dated February 2, 2004 sets forth the inclusive dates where life insurance premiums were not collected and determined that the debt owed was \$700.90. However, the figures as set forth on the overpayment worksheet appear to amount to \$825.41; it is unclear from the record how the Office determined the overpayment was \$700.90. The record reflects a calculation error for the period of January 28, 2001 to January 25, 2002, which totals \$181.35<sup>11</sup> and for the period of January 26 to November 1, 2003, which totals \$139.50.<sup>12</sup> The Board has carefully reviewed the evidence of record and cannot determine how the Office calculated the amount of the overpayment.

The amount of the overpayment has not been established as correct. The case shall be returned for the Office for a new determination of the amount of the overpayment of compensation, including preparation of a memorandum explaining the Office's calculations. Following this and other development as the Office deems appropriate, it shall issue an appropriate decision on this issue.

The Board will set aside the Office's finding on the amount of the overpayment. It is premature to address waiver of the overpayment and recovery until the exact amount of the overpayment has been determined.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation from October 13, 1996 to November 1, 2003. The Board finds that the Office incorrectly calculated the amount of the overpayment. The Board further finds that the determination with regard to waiver of overpayment and recovery from continuing compensation is set aside as premature until the amount of the overpayment is determined.

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<sup>11</sup> The Office worksheet indicated that 13 pay periods times \$13.95 equaled \$112.84 where, in fact, the amount should be \$181.35.

<sup>12</sup> The Office worksheet indicated that 10 pay periods times \$13.95 equaled \$84.00 where, in fact, the amount should be \$139.50.

<sup>13</sup> Due to the Board's disposition of the first issue in this case, it is not necessary to address the second or third issue.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part regarding fact of overpayment and set aside on the issue of amount of overpayment and not in posture with regard to waiver and recovery of the overpayment.

Issued: March 3, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member