

On September 9, 1993 appellant, then a 52-year-old distribution window clerk, filed a claim alleging that she injured her back while repeatedly picking bundles of circulars off the floor. The Office accepted her claim for herniated discs at L4-5 and L5-S1 and paid compensation for temporary total disability on the periodic rolls. The employer advised that

appellant was enrolled in a health benefits program at the time of disability, so the Office deducted premiums for health benefits insurance.

When appellant returned to part-time work on July 20, 1998, the Office reduced her compensation to reflect actual earnings. It neglected, however, to continue deductions for health benefits insurance.

On February 25, 2008 the Office made a preliminary determination that appellant received a \$24,506.50 overpayment of compensation because it made no deduction for health benefits insurance from July 19, 1998 through January 19, 2008. It found that she was without fault in creating the overpayment.

Appellant completed an overpayment recovery questionnaire showing over \$96,000.00 in liquid assets (cash on hand, balances in checking and savings accounts, the value of stocks and bonds). She stated that recovery would cause a hardship. Appellant stated that she bought a home before she retired, only to find out that her retirement benefits were half of what she was led to believe. She alleged that the money she was being asked to repay was being pocketed by someone who knew enough to take that amount and put the blame on her. Appellant expressed dissatisfaction with how the Office was handling this matter, both in its communication with her and its delay in correcting the error. She added that premiums for an employee were much smaller than premiums for a retiree, and she was an employee until January 3, 2008.

In a decision dated May 1, 2008, the Office found that appellant received a \$23,267.77 overpayment from July 19, 1998 to September 13, 2007.¹ It explained that the overpayment occurred because it made no deduction for health benefits insurance during the period. The Office found that appellant was not at fault in the matter. Based on a life expectancy table and the financial information she submitted, it further found that appellant had sufficient resources to permit a \$300.00 deduction from ongoing compensation payments to recover the debt.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² A claimant who is already enrolled in a health benefits program is entitled to continued coverage during a leave-without-pay status.³ For claimants receiving benefits on the automatic 28-day payment cycle, deductions will be routinely made at the appropriate rate from the claimant's gross compensation.⁴

¹ The Office noted that appellant's health benefits coverage was canceled (or suspended) on September 13, 2007 reducing both the period and the amount of overpayment initially determined.

² 5 U.S.C. § 8102(a).

³ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Health Benefits Insurance*, Chapter 5.400.3 (August 2004).

⁴ *Id.* at Chapter 5.400.6.a(1).

ANALYSIS -- ISSUE 1

The record contains a printout of appellant's compensation payment history. This history shows that the Office was deducting health benefits insurance premiums from each of her compensation checks until July 19, 1998, when deductions stopped. This coincided with her return to part-time work and the Office's reduction of compensation to reflect her actual earnings. However, when the Office calculated her loss of wage-earning capacity and entitlement to continuing compensation, it failed to account for her health benefits coverage. With no deductions for health benefits insurance, appellant received higher compensation payments every 28 days through September 13, 2007, when she canceled or suspended her health benefits program enrollment to be covered under a Medicare-sponsored health plan. An April 8, 2008 worksheet for calculating arrears shows that for health benefits insurance Code 105, the Office should have deducted \$23,267.77 in premiums from July 19, 1998 to September 13, 2007. The Board will therefore affirm the Office's May 1, 2008 decision on the issues of fact and 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.⁵ An individual should always be found without fault where the overpayment resulted from Office error in the underdeduction of health benefits or life insurance premiums.⁶

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.⁷

Recovery will defeat the purpose of the Act if both: (a) The individual from whom recovery is sought needs substantially all of her current income (including periodic benefits under the Act) to meet current ordinary and necessary living expenses; and (b) The individual's assets do not exceed the resource base (including but not limited to cash, the value of stocks, bonds, savings accounts, mutual funds) of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. The first \$4,800.00 or more, depending on the number of claimant's dependents, is also exempted from recoupment as a necessary emergency resource. If an individual has current income or assets in excess of the allowable amount, a reasonable repayment schedule can be established over a reasonable, specified period of time. It is the individual's burden to submit evidence to show

⁵ 20 C.F.R. § 10.433(a) (1999).

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5.b (May 2004).

⁷ 20 C.F.R. § 10.434 (1999).

that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver.⁸

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.⁹ 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 her position for the worse.¹⁰

ANALYSIS -- ISSUE 2

Appellant is without fault in the creation of the overpayment because the overpayment resulted from the Office's error in the underdeduction of health benefits insurance premiums. But the fact that the Office made a clerical error does not mean that it cannot collect the overpayment. In small increments over the years, she received more than she should have. Although appellant is without fault in creating the overpayment, she is still required to repay the debt unless (1) recovery of the overpayment would defeat the purpose of the Act or (2) recovery of the overpayment would be against equity and good conscience.

Recovery does not defeat the purpose of the Act because appellant's liquid assets exceed the amount allowable for consideration of waiver. Neither is recovery against equity and good conscience. She argued hardship, but she has a resource base (cash, checking and savings accounts, stocks and bonds) that permits the Office to establish a reasonable repayment schedule and she has not demonstrated how repaying the debt would cause a severe financial hardship. Appellant mentioned buying a home before retirement, but she made no attempt to show how repayment would affect this. It is her burden to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver. Further, while appellant may have retired based on representations of her "high three" salary, she has not demonstrated that she gave up a valuable right or changed her position for the worse in reliance on the slightly higher payments she received every 28 days because the Office was not deducting an insurance premium. For these reasons, the Board finds that the Office did not abuse its discretion in denying waiver of the overpayment. The Board will affirm the Office's May 1, 2008 decision on the issue of waiver.¹¹

⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1) (October 2004).

⁹ 20 C.F.R. § 10.437(a) (1999).

¹⁰ *Id.* at § 10.437(b).

¹¹ On appeal, appellant argues that she would face a financial catastrophe if her husband died, or if she had a recurrence of her cancer, or if she needed to buy a new car. If any change in her financial circumstances does arise in the future such that continuing to repay the overpayment would cause a severe financial hardship, appellant may submit to the Office a written request for waiver, together with supporting financial and other documentation.

LEGAL PRECEDENT -- ISSUE 3

Office regulations provide that 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 her attention is called to same. If no refund is made, it 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.¹²

ANALYSIS -- ISSUE 3

Appellant submitted an overpayment recovery questionnaire and supporting documentation. The Office used this financial information, together with its knowledge of her entitlement to continuing compensation and her life expectancy, to establish a reasonable repayment schedule that stretches over a number of years. The Board finds that the Office gave due consideration to relevant factors so as to minimize appellant's hardship and still be able collect the debt in a timely manner. The Board will affirm the Office's May 1, 2008 decision on the rate of recovery from continuing compensation.

CONCLUSION

The Board finds that appellant received a \$23,267.77 overpayment of compensation from July 19, 1998 to September 13, 2007 because the Office made no deduction for health benefits insurance. The Board finds that the Office properly denied waiver, as recovery of the overpayment does not defeat the purpose of the Act and is not against equity and good conscience, as those phrases are defined. Further, the Board finds that the Office properly set the rate of recovery from continuing compensation.

¹² 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board