



## **FACTUAL HISTORY**

On October 3, 2005 appellant, then a 55-year-old quality assurance evaluator, sustained an injury to his back.<sup>1</sup> The Office accepted his claim for exacerbation of spinal lumbar stenosis, lumbago, displacement of lumbar intervertebral disc without myelopathy and other symptoms referable to his back including severe back spasms.<sup>2</sup> It placed appellant on the periodic rolls effective January 22, 2006. An October 11, 2005 claim for compensation (Form CA-7) noted that appellant was enrolled in the Federal Health Care Program.

In a worksheet dated March 4, 2008, the Office determined that appellant received an overpayment because health insurance premiums were not deducted from December 11, 2005 through February 16, 2008. For the period December 11, 2005 to January 21, 2006, it found that the premiums were \$236.12 per pay period. The Office noted that appellant received 1 1/2 payments during this time frame, which was equal to \$354.18. For the period January 22, 2006 to January 20, 2007, it noted that the premiums were \$271.18 per pay period and that appellant received 13 payments, which was equal to \$3,535.34. For the period January 21, 2007 to January 19, 2008, the premiums were \$268.60 per pay period. The Office found that appellant received 13 payments equal to \$3,491.80. For the period January 20 through February 16, 2008, the premiums were \$290.28 per pay period. The Office noted that appellant received one payment which equaled to \$290.28. It added the premiums due to find a total overpayment in the amount of \$7,661.60.

By letter dated March 18, 2008, the Office issued a preliminary determination that appellant had been overpaid in the amount of \$7,672.44, which occurred because health benefits insurance premiums were not deducted from his compensation for the period December 11, 2005 through February 16, 2008. It made a preliminary finding that he was without fault in creating the overpayment. The Office informed appellant of his right to challenge the amount of the overpayment or request a waiver of the overpayment by requesting a telephone conference, a request for a written review of the record or a request for a prerecoumpment hearing. If appellant wished waiver of the overpayment, he was directed to submit financial information by completing an overpayment recovery questionnaire. The Office advised that the form should be accompanied by supporting financial documentation such as income tax returns, bank account statements, bills and canceled checks, plus any other documentation to support the income and expenses shown on the form. Appellant was advised that, if he failed to provide the requested information within 30 days, the Office would deny waiver. No response was received.

By decision dated May 16, 2008, the Office finalized its finding that appellant had received an overpayment of compensation in the amount of \$7,672.44, for which he was not at fault. It found that he was not entitled to waiver of the overpayment and directed recovery from continuing compensation at the rate of \$324.17 each four weeks.

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<sup>1</sup> The Office assigned file number xxxxxx854.

<sup>2</sup> This was assigned file number xxxxxx001.

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

The regulations of the Office of Personnel Management, which administers the FEHB program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.”<sup>3</sup>

In addition, 5 C.F.R. § 890.502(c) provide:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected contributions and any applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees Health Benefits Fund.”<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The record reflects that deductions for health insurance premiums were not made from appellant’s compensation payments for the period December 11, 2005 through February 16, 2008. The Office determined that health benefits of \$7,672.44 should have been deducted from his compensation for this period as he had elected enrollment and premiums were not deducted. Appellant does not dispute that he had elected enrollment for health insurance benefits. In a worksheet dated March 4, 2008, the Office calculated his share of the premiums, which were not withheld from his compensation payment and determined an overpayment in the amount of \$7,661.60.

As no health benefit deductions were made from his compensation during this time period and there is no evidence that he cancelled his health benefits enrollment the Board finds that the record establishes that an overpayment was created in the amount of \$7,661.60 from December 11, 2005 through February 16, 2008, due to the nonwithholding of health insurance premiums.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of the Federal Employees’ Compensation Act provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to

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<sup>3</sup> See 5 C.F.R. § 890.502(a)(1); see also *John Skarbek*, 53 ECAB 630 (2002).

<sup>4</sup> *Id.* at § 890.502(c).

this requirement is a situation which meets the tests set forth as follows in section 8129(b): “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.”<sup>5</sup>

Office regulations, at 20 C.F.R. § 10.438, state:

“(a) 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.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

Although appellant was found without fault in creating the \$7,672.44 overpayment, he bears responsibility for providing the financial information necessary to support a request for waiver. The Office requested that he provide financial information and submit any request for waiver within 30 days of the preliminary overpayment determination. Appellant did not respond within the 30-day time period. The Office noted that his failure to submit the requested information would result in the denial of waiver. Appellant failed to respond within 30 days, as requested by the Office, under the implementing federal regulations, the Board finds that the Office properly denied waiver of the recovery of the overpayment pursuant to 20 C.F.R. § 10.438(b).<sup>7</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The Board’s jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. Section 10.441(a) of the regulations provide:

“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

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<sup>5</sup> 5 U.S.C. § 8129.

<sup>6</sup> 20 C.F.R. § 10.438.

<sup>7</sup> *Id.* at § 10.438(b) provides that failure to submit requested information within 30 days shall result in the denial of waiver of an overpayment. See *R.W. (A.T.)*, 59 ECAB \_\_\_ (Docket No. 07-1845, issued December 7, 2007); *Madelyn Y. Grant*, 57 ECAB 533 (2006).

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.”<sup>8</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, appellant failed to timely complete the financial documents. In cases where the claimant is being paid compensation on the periodic rolls and the claimant does not respond to the preliminary overpayment decision, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible.<sup>9</sup> Furthermore, without the appropriate financial documentation or overpayment questionnaire as required by 20 C.F.R. § 10.441, the Office was unable to consider his financial circumstances. The Board finds that the Office did not abuse its discretion in following its regulations and deducting \$324.17 every four weeks from his continuing compensation payments.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation for the period December 11, 2005 through February 16, 2008, but modifies the amount of the overpayment to \$7,661.60. The Board further finds that the Office properly denied waiver of the recovery of the overpayment. Lastly, the Board finds that the Office properly required repayment of the overpayment by deducting \$324.17 from appellant’s continuing compensation payments.

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<sup>8</sup> 20 C.F.R. § 10.441.

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (October 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 16, 2008 is affirmed, as modified.

Issued: May 8, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board