

On March 20, 2001 appellant, then a 40-year-old mail handler, filed an occupational disease claim alleging carpal tunnel syndrome in both wrists due to the repetitive duties of her

federal employment. By letter dated April 27, 2001, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. It subsequently accepted bilateral reflex sympathetic dystrophy.

The Office paid appellant wage-loss compensation and medical benefits. Prior to March 2, 2009 deductions were taken from her checks of \$62.15 for health benefits, \$6.30 for basic life and \$4.50 for optional life insurance. On February 23, 2009 appellant returned to work in a part-time limited-duty capacity working four hours a day. She stopped working again on March 3, 2009. No deductions were made for health insurance or life insurance for the compensation checks covering the period February 16 through August 14, 2009. Starting with appellant's compensation check for the period August 15 through 28, 2009, the deductions resumed in the amount of \$70.18 for health insurance, \$6.00 for basic life insurance and \$4.32 for optional life insurance.

On October 13, 2009 the Office made a preliminary determination that appellant had been overpaid in the amount of \$954.49 because there was an underdeduction of health benefit premiums and basic and optional life insurance premiums for the period March 2 through August 14, 2009. This consisted of \$832.13 for health insurance code 104, \$71.14 for basic life and \$51.22 optional life. The Office further found that appellant was without fault in the creation of the overpayment. Appellant was informed of her right to challenge the amount of the overpayment or request waiver of the overpayment within 30 days. If she wished a waiver of the overpayment, she was directed to submit financial information by completing an overpayment recovery questionnaire within 30 days. Appellant did not file a timely response.

By decision dated November 17, 2009, the Office finalized the overpayment in the amount of \$954.49 and that appellant had not established that she was entitled to a waiver.

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

The Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> When an overpayment has been made to an individual 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.

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employee Health Benefits (FEHB) program. The regulations of the Office of Personnel Management (OPM), which administers the FEHB program, provides guidelines for registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides that an 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 indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* at § 8102(a).

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) provides that an agency that withholds less than or none of the proper health benefits contributions from an individual's pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions 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>

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.<sup>5</sup> An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>6</sup> The Board has recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM when the error is discovered.<sup>7</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>8</sup> The coverage for basic life insurance is effective unless waived<sup>9</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>10</sup>

While the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee's compensation.<sup>11</sup> 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.<sup>12</sup> When an underwithholding of life insurance premiums occurs, the entire amount is

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<sup>3</sup> 5 C.F.R. § 890.502(a)(1).

<sup>4</sup> *Id.* at 890.502(c).

<sup>5</sup> *Id.* at 890.602(a)(1).

<sup>6</sup> *Id.*

<sup>7</sup> See *James Lloyd Otte*, 48 ECAB 334 (1997); *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

<sup>8</sup> 5 U.S.C. § 8702(a).

<sup>9</sup> *Id.* at § 8702(b).

<sup>10</sup> *Id.* at § 8707.

<sup>11</sup> *Id.* at § 8707(b)(1).

<sup>12</sup> *Id.* at § 8706(b).

deemed an overpayment of compensation because the Office must pay the full premium to OPM upon discovery of the error.<sup>13</sup>

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

Appellant temporarily returned to work part time on February 23, 2009 and worked through March 2, 2009. Prior to her return to work, she had deductions made from her compensation checks for health insurance, basic life insurance and optional life insurance. However, for compensation checks covering the period March 3 through August 14, 2009, the Office did not make these deductions. The Office established that premiums should have been deducted for this time period in the amount of \$832.13 for health insurance code 104, \$71.14 for basic life insurance and \$51.22 for optional life insurance, which resulted in a total overpayment of \$954.49. There is no evidence that appellant waived coverage. Therefore, the Board finds that the Office should have deducted these premiums. This created an overpayment in the amount of \$954.49. The Board will affirm the November 17, 2009 decision on fact and amount of overpayment due to the nondeduction of health benefits and life insurance premiums.

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

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office unless 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>14</sup> Waiver of an overpayment is not permitted unless the claimant is without fault in creating the overpayment.<sup>15</sup> 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.<sup>16</sup>

The Office's regulations at 20 C.F.R. § 10.438 provide that 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. 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>17</sup>

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<sup>13</sup> *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, *supra* note 7.

<sup>14</sup> 5 U.S.C. § 8129.

<sup>15</sup> *Steven R. Confrancesco*, 57 ECAB 662 (2006).

<sup>16</sup> 5 U.S.C. §§ 10.434-37.

<sup>17</sup> See 20 C.F.R. § 10.438. See *Madelyn Y. Grant*, 57 ECAB 533 (2006).

## **ANALYSIS -- ISSUE 2**

The Act and implementing federal regulations are clear that entitlement to waiver is not established solely by finding that a claimant is without fault in creating an overpayment. Rather, such a finding entitles appellant the opportunity to submit evidence and establish a basis for granting waiver of the recovery of the overpayment.<sup>18</sup>

The Office found that appellant was without fault in the matter of the overpayment. However, payment is required unless it is established that adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>19</sup>

Appellant received proper notice of the overpayment. In its October 13, 2009 preliminary notice of overpayment, the Office informed her of the steps to take should she seek waiver of the overpayment. It advised appellant to submit a completed overpayment recovery questionnaire, as well as information and evidence regarding her income and expenses, within 30 days. Appellant did not respond within 30 days or prior to the issuance of the Office's final overpayment decision on November 17, 2009. As a result, there was no evidence before the Office to establish whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>20</sup> As appellant failed to submit the requested information, under section 10.438 of the Office's regulations she is not entitled to waiver.<sup>21</sup>

Appellant contended on appeal that she submitted financial evidence on December 2, 2009. The Board notes she submitted additional evidence, including financial information, after the Office rendered its November 17, 2009 decision. However, the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>22</sup> Therefore, this additional evidence cannot be considered by the Board.

## **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$954.49 because there was an underdeduction of health benefit premiums and basic and optional life insurance premiums for the period March 2 through August 14, 2009. The Board further finds that the Office properly denied waiver of the recovery of the overpayment.

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<sup>18</sup> See *James Lloyd Otte*, *supra* note 7.

<sup>19</sup> See *Keith H. Mapes*, *supra* note 13.

<sup>20</sup> T.S., 60 ECAB \_\_ (Docket No. 08-1604, issued March 13, 2009). See 20 C.F.R. § 10.438(a) (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>21</sup> See *id.*

<sup>22</sup> 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 17, 2009 is affirmed.

Issued: December 2, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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