

appropriate benefits. Appellant eventually stopped work and was placed on the periodic compensation rolls. He retired on June 20, 1996 but elected to continue receiving wage-loss compensation from the Office.

In July 2009, the Office reviewed appellant's case file and determined that he was receiving optional life insurance through the Office of Personnel Management (OPM); however, copies of appellant's insurance forms regarding his election of postretirement life insurance and optional life insurance were not of record. In a July 8, 2009 letter to OPM, the Office requested copies of appellant's postretirement insurance forms. On August 3, 2009 OPM indicated that on December 31, 1989 appellant had elected basic life insurance with no reduction (maximum coverage) but did not elect optional life insurance. It noted that appellant's final salary for basic life insurance was \$29,053.00 and his life insurance benefits were transferred to OPM March 18, 1996. A copy of appellant's December 31, 1989 life insurance election form was attached.

On October 23, 2009 the Office issued a preliminary determination that appellant was without fault with regard to the creation of a \$12,578.56 overpayment of compensation that occurred during the period March 18, 1996 to September 26, 2009 because optional life insurance premiums were deducted but the basic life insurance premiums were not deducted. It indicated that during the period March 18, 1996 to September 26, 2009 only optional life insurance in the amount of \$350.64 was withheld; but basic life insurance of \$1,748.42² and postretirement basic life insurance of \$11,180.78, for a total of \$12,929.20 should have been withheld. An overpayment of \$12,578.56 (\$12,929.20 minus \$350.64) was found as basic life and no postretirement basic life should have been withheld as opposed to the deductions for optional life insurance. Appellant was informed of his right to challenge the amount of the overpayment or request a waiver of the overpayment. He was also directed to submit financial information by completing an overpayment recovery questionnaire. The Office advised that failure to submit the requested financial information within 30 days would result in the denial of waiver. It attached copies of appellant's compensation history from November 7, 1995 to September 26, 2009 which reflected only optional life insurance premiums had been withheld from his compensation. The Office also attached worksheets, which indicated deductions for basic life insurance and postretirement basic life insurance for the period March 18, 1996 to September 26, 2009 should have been \$12,929.20.³

On October 28, 2009 the Office sent appellant a copy of the overpayment recovery questionnaire. Also on October 28, 2009 appellant advised the Office that he disagreed with the preliminary overpayment determination and requested a precoupment hearing on the issues of fault and a possible waiver of overpayment.

On January 7, 2010 the Office informed appellant to complete the overpayment recovery questionnaire and to submit supporting documentation to include copies of the last six months of

² The Office made a typographical error in its October 29, 2009 decision. It used \$1,748.72; but it should have been \$1,748.42.

³ The worksheets reflected that deductions for basic life and postretirement basic life insurance premiums respectively should have been \$121.06 and \$726.38 for the period March 18, 1996 to February 1, 1997; \$316.16 and \$1,900.80 for the period February 2, 1997 to May 22, 1999; \$600.80 and \$3,864.96 for the period May 23, 1999 to January 24, 2004; and \$710.40 and \$4,688.64 for the period January 25, 2004 to September 26, 2009.

utility bills, mortgage/rent statements, credit card bills, out-of-pocket medical bills, insurance payments on car, house and other policies, car payment(s), any other monthly expenses, and any other evidence such as bank statements, stock/bonds statements, etc. which he wished to be considered with regard to the overpayment.

Of record was a copy of appellant's February 11, 2010 letter to OPM, which advised he wished to cancel his life insurance.

A telephonic hearing was held on March 9, 2010. During the hearing, appellant agreed that an overpayment occurred but he did not believe the life insurance should have been that high and he thought there was no price increase up to age 65 and he was only 59 years old. The hearing representative informed him that there was a provision for retiring before the age of 65, where OPM asks for an election to continue coverage. Appellant testified that he would have cancelled his life insurance earlier if he knew how much it cost. He stated that he was under the impression that he just had regular basic life insurance as he had when he was working. Appellant noted receiving the overpayment recovery questionnaire and indicated that he could repay the debt in full although he asserted that he did not think it fair. He indicated that he did not think he could qualify for a waiver due to his financial status. Appellant stated that he did not recall whether he was asked if he wanted to continue his life insurance coverage when he retired. The record was held open for 30 days for appellant to submit additional evidence.

On March 17, 2010 the Office provided appellant copies of the worksheets and compensation history on which it had based its preliminary overpayment determination.

Appellant provided a March 22, 2010 statement along with a March 17, 2010 letter from OPM. OPM indicated that it notified the Office on August 28, 1997 that appellant had elected no reduction basic life insurance and included a copy of such election. It indicated that it had not heard from appellant about his life insurance until January 20, 2010. Also provided was a March 10, 2010 letter from appellant's congressman which contained duplicative copies of material already of record.

In an April 29, 2010 decision, the Office finalized its determination that an overpayment of \$12,578.56 occurred because OPM deducted optional life insurance premiums when deductions for basic life insurance premiums and postretirement basic life insurance with no reduction premiums should have been withheld during the period March 18, 1996 to September 26, 2009. Appellant was found without fault in the creation of the overpayment but the Office further found that the circumstances of his case did not warrant waiver of recovery of the overpayment and he was not entitled to compromise of the charges or principle of the debt. He was directed to repay the debt in full.

LEGAL PRECEDENT -- ISSUE 1

The Act⁴ 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.⁵ When an overpayment has been made to an individual because of an error of fact or law,

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Id.* at § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

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.⁷ The coverage for basic life insurance is effective unless waived⁸ and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.⁹ While the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee's compensation.¹⁰ 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.¹¹ 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.¹²

ANALYSIS -- ISSUE 1

During the period March 18, 1996 to September 26, 2009, the Office deducted \$350.64 in optional life insurance premium. Appellant had elected premiums for basic life insurance and postretirement basic life insurance with no reduction, but the Office failed to deduct these premiums. The worksheets show that, during the aforementioned period, \$1,748.72 in basic life insurance and \$11,180.78 in postretirement basic life insurance with no reduction or a total of \$12,929.20 should have been withheld. In the absence of a specific waiver of coverage, of which there is none in this case, the Office should have deducted the premiums. Consequently, the Office's failure to deduct the proper life insurance premiums caused an overpayment in compensation in the amount of \$12,578.56. The Board will affirm the Office's April 29, 2010 decision regarding the fact and amount of overpayment for the life insurance premiums during the period March 18, 1996 to September 26, 2009.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Act and the implementing regulations, an overpayment must be recovered 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.¹³ Section 10.433 of the implementing regulations provide that the Office may

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8707(b)(1).

¹¹ *Id.* at § 8706(b).

¹² *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹³ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

consider waiving an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹⁴ Section 10.434 provides that, if the Office finds the recipient of an overpayment was not at fault, repayment will be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the [Act], or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience.¹⁵

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purpose of the Act if the beneficiary needs substantially all of his current income to meet current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office. Section 10.437 provides that a recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when any individual in reliance in such payments gives up a valuable right or changes his or her position for the worse.¹⁶

The individual who received the overpayment is responsible for providing information concerning income, expenses and assets as specified by the Office.¹⁷ This information is needed to determine whether recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience.¹⁸ This information will also be used to determine the repayment schedule, if necessary.¹⁹ 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 provided.²⁰

¹⁴ 20 C.F.R. § 10.433(a).

¹⁵ *Id.* at § 10.434. 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. *Id.* at § 10.436. 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. *Id.* at § 10.437(a). 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. *Id.* at § 10.437(b).

¹⁶ 20 C.F.R. § 10.437.

¹⁷ *Id.* at § 10.438(a).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

The record establishes that appellant received an overpayment of \$12,578.56 because the Office failed to deduct the correct amount for his basic life insurance and postretirement basic life insurance premiums during the period March 18, 1996 to September 26, 2009. The Office determined that he was without fault in the creation of the overpayment because he had no notice or knowledge that the Office was not deducting correct life insurance premiums. Therefore, the issue is whether it properly denied waiver of recovery of the \$12,578.56 overpayment. Although appellant was without fault in creating the \$12,578.56 overpayment, he nonetheless bears responsibility for providing the financial information necessary to support his request for waiver.²¹ Despite two requests from the Office, he failed to submit financial information to the Office. Because appellant failed to submit the requested financial documentation, he left the Office no choice but to deny his request for waiver. The Board will affirm the Office's April 29, 2010 decision on the issue of waiver.

On appeal, appellant argues that the overpayment should be waived as he was without fault in creating the overpayment. However, a finding that a claimant was without fault does not automatically result in waiver of the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.²² As discussed, appellant failed to submit the necessary financial information to the Office so that waiver could be considered. He also argues that repayment of the overpayment should be split between the Office and himself with no additional fees attached to the principle. The Board notes that the Office found appellant was not entitled to compromise of the charges or principle of the debt and ordered the debt be paid in full. As the Office did not direct recovery of the overpayment from continuing compensation payments, repayment of the debt is subject to review by the Board.²³

CONCLUSION

The Board finds that the Office properly determined that a \$12,578.56 overpayment occurred in appellant's case and properly denied waiver of recovery of the overpayment.

²¹ *Madelyn Y. Grant*, 57 ECAB 533, 537 (2006).

²² *L.S.*, 59 ECAB 350 (2008).

²³ The Board's jurisdiction over recovery of an overpayment is limited to a review of those cases where the Office seeks recovery from continuing compensation payments. *See Terry A. Keister*, 56 ECAB 559 (2005). The Office also found appellant was not entitled to compromise of the charges or principle of the debt. Under its procedures, the compromise of all or part of the overpayment and any charges may be made depending upon the individual claimant's financial circumstances in order to set a repayment schedule. Compromise of the principal of the overpayment can be considered if application of the interest charges would extend the period of repayment by more than 35 percent. Such a determination is made at the time the repayment schedule is established. *See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, Debt Liquidation*, Chapter 6.300.5 (May 2004). *See Jorge E. Diaz*, 53 ECAB 403 (2002). Compromise is a matter which rests in the discretion of the Office. *See id.*

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board