

**United States Department of Labor
Employees' Compensation Appeals Board**

Y.H., Appellant

and

**INTERNAL REVENUE SERVICE,
Chamblee, GA, Employer**

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**Docket No. 10-2148
Issued: September 28, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 25, 2010 appellant filed a timely appeal from a July 20, 2010 decision of the Office of Workers' Compensation Programs (OWCP) that found that she received an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$267.42 because OWCP did not deduct premiums for health benefits and optional and

¹ 5 U.S.C. §§ 8101-8193.

basic life insurance for the period March 14 through April 10, 2010; and (2) whether OWCP properly denied waiver of the overpayment.

On appeal she asserts that, as she was found without fault in the creation of the overpayment, it should be forgiven.

FACTUAL HISTORY

On May 4, 2005 appellant, then a 40-year-old customer service representative, filed an occupational disease claim, alleging that employment duties caused right carpal tunnel syndrome. OWCP accepted the condition of sprain/strain of the right hand as employment related, and under a separate claim, accepted that she sustained employment-related tendinitis of the left wrist. The claims were doubled on October 20, 2006, and appellant was placed on the periodic compensation rolls. On August 30, 2006 she filed an occupational disease claim for tenosynovitis of the right wrist. After initially denying the claim on January 16, 2007, on April 23, 2007, an OWCP hearing representative remanded the case for further development. The three claims were combined on April 26, 2007, and on June 25, 2007, OWCP accepted the additional condition of aggravation of congenital reduction deformities of the right upper limb. On June 8, 2010 appellant elected civil service retirement benefits, effective that day. She received FECA benefits through June 7, 2010.

On June 10, 2010 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$267.42 had been created for the period March 14 through April 10, 2010. OWCP explained that the overpayment occurred because premiums for health benefits and basic and optional life insurance were not deducted from her compensation for this period. She was found not at fault and was provided an overpayment action request and overpayment questionnaire.

The record contains Federal Employees' Health Benefits (FEHB) forms showing that appellant was enrolled under code number F82 and that she had basic life insurance and had selected code E1 optional life insurance. An overpayment worksheet indicates that appellant's health insurance premium for code F82 for the period March 14 through April 10, 2010 was \$251.52, her basic life insurance premium was \$14.70, and her optional life insurance premium was \$1.20, for a total of \$267.42. A FECA payment print-out indicates that these deductions were not made for the period March 14 through April 10, 2010.

Appellant did not respond to the preliminary overpayment finding.² By decision dated July 20, 2010, OWCP finalized the preliminary overpayment decision, finding that appellant received an overpayment in compensation in the amount of \$267.42 and, while she was not at fault, she was not entitled to waiver of the overpayment because she failed to supply the requested overpayment questionnaire. Appellant was ordered to repay the overpayment in full.

² Concurrently with development of the overpayment, on June 24, 2010 OWCP notified appellant that she had been offered a position at the employing establishment which was found suitable. Appellant was notified of the penalty provisions of section 8106(c)(2) of FECA and given 30 days to respond. In correspondence dated July 9, 2010, appellant disagreed with the suitability finding. She did not mention the preliminary overpayment finding.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA 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.³

The Office of Personnel Management (OPM), rather than OWCP, has jurisdiction over the matter of health insurance deductions from compensation, and over enrollment under the FEHB.⁴ OPM regulations provide guidelines for the registration, enrollment and continuation of enrollment for federal employees. In this connection, section 890.502(a)(1) provides that an employee or annuitant is responsible for payment of the employee's share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due to the United States in the amount of the proper employee withholding required for that pay period.⁵ In addition, section 890.502(c)(1) 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 of the United States Code, to OPM for deposit in the Employees Health Benefits Fund.⁶ When OWCP deducts less than the proper health benefit premium for the coverage selected, an overpayment in compensation is created.⁷ The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment in compensation because OWCP must pay the full premium to OPM when the error is discovered.⁸

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.⁹ The coverage for basic life insurance is effective unless waived,¹⁰ and the premiums for basic and optional life coverage are withheld from the employee's pay.¹¹ 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

³ 5 U.S.C. § 8102(a).

⁴ *Raymond C. Beyer*, 50 ECAB 164 (1998).

⁵ 5 C.F.R. § 890.502(a)(1).

⁶ 5 U.S.C. § 8906; 5 C.F.R. § 890.502(c)(1).

⁷ See *John Skarbek*, 53 ECAB 630 (2002).

⁸ *James Lloyd Otte*, 48 ECAB 334 (1997).

⁹ 5 U.S.C. § 8702(a); 5 C.F.R. § 870.201.

¹⁰ 5 U.S.C. § 8702(b); 5 C.F.R. § 870.204(a).

¹¹ 5 U.S.C. § 8707.

premiums from his or her compensation payments.¹² When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹³ OWCP procedures provide that in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage.¹⁴

ANALYSIS -- ISSUE 1

The record supports that for the period March 14 through April 10, 2010, OWCP did not make deductions from appellant's FECA benefits for her enrollment in FEHB code F82, or for her basic and optional life insurance premiums. OWCP established that the premium for health insurance code F82 for this period was \$251.52, \$14.70 for basic life insurance, and \$1.20 for optional life insurance. There is no evidence that appellant waived coverage. When an underwithholding of these premiums is discovered, the entire amount is deemed an overpayment in compensation because OWCP must pay the full amount of the premium to OPM when the error is discovered.¹⁵

The Board therefore finds that OWCP should have deducted these premiums and did not. This created an overpayment in compensation in the amount of \$267.42. The Board will affirm the July 20, 2010 decision with regard to fact and amount of overpayment due to the nondeduction of premiums for health benefits and basic and optional life insurance.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."¹⁶ Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery on an overpayment would defeat the purpose of FECA or be against equity and good

¹² *Id.* at § 8706(b); 20 C.F.R. § 870.401.

¹³ *Id.* at § 8707(d); *Keith H. Mapes*, 56 ECAB 130 (2004).

¹⁴ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4(a) (August 2004).

¹⁵ *James Lloyd Otte*, *supra* note 8; *Keith H. Mapes*, *supra* note 13.

¹⁶ 5 U.S.C. § 8129.

conscience.¹⁷ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁸

ANALYSIS -- ISSUE 2

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹ Appellant, however, had the responsibility to provide financial information to OWCP,²⁰ and did not do so.

In its preliminary determination dated June 10, 2010, OWCP clearly explained the importance of providing the requested financial information and advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting her income and expenses at any time prior to the July 20, 2010 decision over which the Board has jurisdiction.²¹ Thus, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience as it would cause a financial burden. Consequently, even though appellant was without fault, as she did not submit the financial information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in the amount of \$267.42.²²

With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.²³ As appellant is no longer receiving wage-loss compensation, the Board does not

¹⁷ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.

¹⁸ 20 C.F.R. § 10.438.

¹⁹ *Supra* note 17.

²⁰ *Supra* note 18.

²¹ The Board's jurisdiction to consider and decide appeals from final decisions of OWCP extends only to those final decisions issued within 180 days prior to the filing of the appeal. 20 C.F.R. § 501.3(e).

²² 20 C.F.R. § 10.438.

²³ *Cheryl Thomas*, 55 ECAB 610 (2004).

have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act.²⁴

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$267.42 and that OWCP properly denied waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 28, 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

²⁴ *Id.*