

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE G. COX and GOVERNMENT PRINTING OFFICE,
Washington, D.C.

*Docket No. 97-1058; Submitted on the Record;
Issued April 13, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of \$1,142.79 due to lack of deductions for life insurance premiums; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly withheld \$200.00 from appellant's continuing compensation to recover the overpayment.

The Office accepted that appellant sustained carpal tunnel syndrome of the right hand due to factors of her federal employment. The Office placed appellant on the periodic rolls effective March 24, 1990.

By letter dated July 3, 1996, the Office of Personnel Management (OPM) informed the Office that appellant had elected to receive basic life insurance and postretirement basic life insurance at a 50 percent reduction effective July 2, 1994.

On a worksheet dated September 10, 1996, the Office computed the amount of insurance premiums which should have been deducted from July 2 to September 14, 1996 for basic life and postretirement insurance premiums.

In a preliminary decision dated September 17, 1996, the Office found that appellant received a \$1,142.79 overpayment because the Office failed to deduct from her disability compensation the premiums for basic and postretirement life insurance from July 2 to September 14, 1996. The Office further found appellant to be without fault in the creation of the overpayment and indicated that it had sent appellant an overpayment recovery questionnaire.

Appellant did not return the overpayment recovery questionnaire.

By decision dated November 13, 1996, the Office finalized its determination of an overpayment in the amount of \$1,142.79. The Office further found that waiver was not warranted and that the overpayment would be recovered at the rate of \$200.00 every four weeks.

The Board finds that the Office properly determined that appellant received an overpayment of \$1,142.79 due to lack of deductions for life insurance premiums.

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the federal government are eligible to participate in basic life insurance and one or more of the options.¹ The coverage for basic life is effective unless waived,² and premiums for basic and optional life coverage are withheld from the employee's pay.³

The Federal Employees' Compensation Act⁴ and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain conditions⁵ and may also retain the optional life insurance.⁶ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.⁷ If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments.⁸ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.⁹

In this case, the record reveals that when appellant retired from the employing establishment on July 2, 1994, she was entitled to basic life insurance and postretirement life insurance. The Office did not deduct the premiums from her compensation benefits, which created an overpayment of compensation.

When an underholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation to appellant because the Office must pay the full premium to OPM upon discovery of the error.¹⁰ In the instant case, the Office properly set forth its calculations in determine the amount of overpayment and found that, as the Office failed to deduct the proper amounts from the time appellant retired until September 14, 1996, she received an overpayment of compensation in the amount of \$1,142.79.

¹ Part 870 - Basic Life Insurance, subpart B - Coverage; *see* 5 C.F.R. § 870.201.

² 5 U.S.C. § 870.204(a).

³ 5 C.F.R. § 870.401(a).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 C.F.R. § 870.701, subpart G.

⁶ 5 C.F.R. §§ 871.201, subpart B; 872.201, subpart B; 873.203, subpart B.

⁷ 5 C.F.R. § 870.501.

⁸ 5 C.F.R. § 872.410, subpart D.

⁹ *Glen B. Cox*, 42 ECAB 703 (1991).

¹⁰ 5 C.F.R. § 872.401(h); *Calvin W. Scott*, 39 ECAB 1031 (1988).

The Board further finds that the Office did not abuse its discretion in denying waiver of the overpayment after finding that appellant was without fault.

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that results within the Office's discretion pursuant to statutory guidelines.¹¹ These statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment or recovery [of an overpayment] 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 this subchapter or would be against equity and good conscience."¹² Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), the Office may recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.¹³

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 10.322 and 10.323, respectively, of the Code of Federal Regulations. Section 10.322(a) provides, generally, that recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and, also, if the individual's assets, those which are not exempt from recovery, do not exceed a resource base of \$3,000.00 (or \$5,000.00 if the individual has a spouse or one dependent, plus \$600.00 for each additional dependent).¹⁴ Section 10.323 provides, generally, that recovery of an overpayment would be against equity and good conscience if: (1) the overpaid individual would experience severe financial hardship in attempting to repay the debt, with "severe financial hardship" determined by using the same criteria set forth in section 10.322; or (2) the individual, in reliance on the payment which created the overpayment, relinquished a valuable right or changed position for the worse.¹⁵

Although appellant was found to be without fault in the matter of the overpayment, she nevertheless bears responsibility for providing the requisite information to support waiver of the

¹¹ See *Robert Atchison*, 41 ECAB 83 (1989).

¹² 5 U.S.C. § 8129(b).

¹³ Appellant argued that the overpayment should be waived because she was not found to be at fault in its creation but she would only be entitled to such waiver if it were shown, under the standards described below, that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

¹⁴ 20 C.F.R. § 10.322(a).

¹⁵ 20 C.F.R. § 10.323.

overpayment. In this regard, section 10.324 of Title 20 of the Code of Federal Regulations provides:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in section 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished.”¹⁶

In the present case, appellant failed to meet her responsibility for providing the requisite financial information to support waiver of the overpayment. The Office requested that appellant submit a Form OWCP-20 for the purpose of determining her entitlement to waiver of the overpayment but she failed to submit the information within the 30 days allotted by the Office.

On appeal, appellant argues that she should not have to repay the overpayment because she was without fault. However, the Act and its implementing regulations are clear that entitlement to waiver is not established solely by a finding that appellant is without fault in creating the overpayment.¹⁷ Rather such a finding entitles appellant only to the opportunity to establish a basis for granting waiver of the recovery of the overpayment pursuant to section 8129.

Appellant has not established that recovery of the overpayment would defeat the purpose of the Act because she has failed to submit financial information showing that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the applicable resource base. She also has not established that recovery of the overpayment would be against equity and good conscience because she has failed to submit financial information showing that she would experience severe financial hardship in attempting to repay the debt and has failed to submit evidence that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.¹⁸ Thus, appellant has failed to show that the Office abused its discretion by refusing to waive recovery of the overpayment.

The Board also finds that appellant submit \$200.00 per month as repayment of the overpayment.

The Office’s implementing regulations provide:

¹⁶ 20 C.F.R. § 1.324; *see John B. Moore*, 41 ECAB 804 (1990).

¹⁷ *See William J. Murphy*, 40 ECAB 569 (1989) (finding that waiver is not automatic when appellant is without fault in creating the overpayment).

¹⁸ *See William J. Murphy*, 41 ECAB 569 (1989).

“Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office shall proceed to recover the same.”¹⁹

As appellant failed to submit any current financial information, there was no evidence from which the Office could determine what amount she could afford to repay per month. Therefore, the Board finds that the Office’s decision to recover from appellant \$200.00 per month is appropriate.

The decision of the Office of Workers’ Compensation Programs dated November 13, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ 20 C.F.R. § 10.321(b).