

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE STEUER and DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, El Portal, CA

*Docket No. 99-2358; Submitted on the Record;
Issued June 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of \$1,352.03 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 \$300.00 per month from appellant's continuing compensation to recover the overpayment.

The Office accepted that on July 31, 1992 appellant, then a 37-year-old concessions management assistant, sustained lumbar strain, lumbar disc displacement and major depressive disorder, single episode.

On July 9, 1997 the Office of Personnel Management (OPM) informed the Office that it should begin withholding premiums for basic life insurance and postretirement basic life insurance with no reduction effective August 19, 1996. In an internal memorandum dated March 25, 1998, an Office claims examiner noted that appellant owed life insurance premiums retroactive to August 19, 1996 and calculated that the amount to be withheld was \$4.45 biweekly for basic life and \$21.06 biweekly for postretirement basic life. In a worksheet dated August 28, 1998, the Office computed the amount of insurance premiums, which should have been deducted from August 19, 1996 through August 25, 1998 for basic life and postretirement basic life insurance premiums.

On September 8, 1998 the Office notified appellant of its preliminary determination that she had received a \$1,352.03 overpayment because premiums for her postretirement optional life insurance were not deducted from her disability compensation from August 19, 1996 through August 25, 1998. The Office found appellant to be without fault in the creation of the overpayment and indicated that it had sent her an overpayment recovery questionnaire.

In a response dated September 25, 1998, appellant requested a prerecoupment hearing. She did not complete the overpayment recovery questionnaire or submit supporting financial

documents. In a letter to the Office dated October 8, 1998, appellant indicated that she had recently moved and was not able to estimate the cost of living. She requested waiver of the overpayment “based on nonfinancial issues.”

At the hearing held on February 25, 1999, appellant related that she signed a paper on August 14, 1996 with the employing establishment, which continued her basic life insurance with no deduction. Appellant stated that she was too upset about her career with the employing establishment ending to pay attention to the form. She further related that she received forms from the Office indicating that she did not have life insurance.

By decision dated June 7, 1999, the hearing representative finalized the Office’s determination that an overpayment in the amount of \$1,352.03 existed because deductions for basic life insurance were not made from August 19, 1996 through August 15, 1998. The hearing representative clarified that the overpayment arose because of lack of deductions for basic life insurance rather than optional life insurance. He also found that waiver was not warranted and that the overpayment would be recovered at the rate of \$300.00 every four weeks.

The Board finds that the Office properly determined that appellant received an overpayment of \$1,352.03 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

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.

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, OPM notified the Office that effective August 19, 1996 appellant was entitled to basic life insurance and postretirement basic life insurance with no deduction. The Office did not deduct the premiums from appellant's 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 this case, the Office properly set forth its calculations in determining the amount of overpayment due to lack of deductions for life insurance premiums from August 19, 1996 through August 15, 1998 and found that appellant received an overpayment of compensation in the amount of \$1,352.03.

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.

Section 8129(a) of the Act¹¹ provides that, where an overpayment of compensation has been made "because of an error of fact or law" adjustments shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth in section 8129(b): "Adjustments 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 [the Act] or would be against equity and good conscience."¹²

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.¹³ The Office must 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," pursuant to the guidelines provided in sections 10.434-.437 of the implementing federal regulations.

Section 10.436¹⁴ provides that 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 the beneficiary from whom the Office seeks recovery needs substantially all of his or her current

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).

¹¹ 5 U.S.C. § 8129(a).

¹² 5 U.S.C. § 8129(b).

¹³ *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁴ 20 C.F.R. § 10.436.

income (including compensation benefits) to meet current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics. Office procedures provide that a beneficiary's assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or dependent plus \$600.00 for each additional dependent.¹⁵ For waiver under the "defeat the purpose of the Act" standard, appellant must show both that she needs substantially all of her current income to meet current ordinary and necessary living expenses and that her assets do not exceed the resource base of \$3,000.00.¹⁶

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 overpayment. In this regard, section 10.438(a) provides: "The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]."¹⁷ Section 10.438(b) provides: "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."¹⁸

In this case, appellant failed to meet her responsibility for providing the requisite financial information to support waiver of the overpayment. Accordingly, the Office properly found that she was not entitled to waiver of the overpayment.¹⁹

The Board also find that the Office properly required repayment by withholding \$300.00 per month from appellant's continuing compensation.

Section 10.441(a) provides if an overpayment has been made to an individual who is entitled to further payments and no refund is made, the Office "shall decrease later payments of 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."²⁰

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200 (September 1994).

¹⁶ *James Lloyd Otte*, *supra* note 13; *Jesse T. Adams*, 44 ECAB 256 (1992).

¹⁷ 20 C.F.R. § 10.438.

¹⁸ 20 C.F.R. § 10.438(b).

¹⁹ Appellant argued that the overpayment should be waived because she was not found at fault in its creation and because the overpayment would have been less had the Office deducted the premiums from her compensation at the time it received notice from OPM. However, appellant would only be entitled to waiver if it were shown, under the standards described above, that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience; *see William J. Murphy*, 40 ECAB 569 (1989) (finding that waiver is not automatic when appellant is without fault in creating the overpayment).

²⁰ 20 C.F.R. § 10.441(a).

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 \$300.00 per month from appellant's continuing compensation is appropriate.

The June 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 20, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member