U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED CARROLL and DEPARTMENT OF TRANSPORTATION, JACKSONVILLE AIR TRAFFIC CONTROL CENTER, Jacksonville, FL

Docket No. 01-1943; Submitted on the Record;
Issued August 28, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for waiver of recovery of a $1,958.23 overpayment in compensation.

On February 23, 1993 appellant, then a 47-year-old supervisory air traffic control specialist, filed a claim for asthma and chronic bronchitis, which he attributed to exposure to cigarette smoke at the employing establishment. The Office accepted his claim for permanent aggravation of bronchitis and aggravation of chronic obstructive pulmonary disease. The Office authorized leave buy back for intermittent periods of disability retroactive to April 4, 1992. In a February 2, 1995 decision, the Office issued a schedule award for a 51 percent permanent impairment of each lung. In a June 19, 1995 decision, the Office vacated its February 2, 1995 decision. In a June 20, 1995 decision, the Office issued a schedule award for a 65 percent permanent impairment of each lung. The period of the award was from June 16, 1994 to May 5, 1998. Appellant stopped working on February 5, 1998. He elected compensation benefits and began receiving temporary total disability compensation effective June 26, 1998.

In a May 17, 2000 letter, the Office found that appellant had received a $1,883.77 overpayment of compensation because deductions from compensation payments were not made for basic life insurance for the period August 1, 1998 to April 22, 2000 and for optional life insurance from October 11, 1998 to March 25, 2000. The Office made a preliminary finding that appellant was without fault in the creation of the overpayment. The Office informed him that recovery of the overpayment might be waived if recovery would defeat the purpose of the Federal Employees' Compensation Act or would be against equity and good conscience. The Office requested that appellant submit financial information so that it could determine whether recovery of the overpayment should be waived.

In an overpayment recovery form, appellant indicated that he had monthly income of $23.00 on his bank accounts in addition to his net compensation payment of $5,621.30. He listed assets of $9,000.00 in savings, $500.00 in checking and $95.00 cash on hand. Appellant stated that he had monthly expenses of $700.00 for food, $50.00 for clothing, $1,246.00 for mortgage,

$150.00 for electricity, $200.00 for telephone service, $100.00 in home maintenance, $260.00 for gas, oil, insurance and maintenance of a car, $550.00 in alimony, $300.00 in unreimbursed medical expenses, $40.00 in charity expenses, $100.00 in additional insurance, $200.00 in commuting expenses, $350.00 in lawn maintenance and $80.00 for garbage collection and newspaper service. He also reported a total of $47,429.62 in home equity loan and credit card debt, on which he was paying $1,555.00 a month. In an accompanying letter, appellant requested waiver of recovery of the overpayment. He stated that his wife was disabled due to a heart transplant and had renal failure and a need for hip replacement surgery due to the medication she had been taking to prevent rejection of the heart. Appellant indicated that the money he had in savings was decreasing monthly due to medical expenses and the rest had to be reserved for future medical emergencies. He noted that, due to his health problems, he had to hire others to do the house cleaning and lawn maintenance. Appellant commented that he would have to purchase a home dust filtering system, which would create additional monthly expenses. He stated that his current monthly expenses took all his income and that the additional house cleaning and lawn maintenance expense of $350.00 would be paid out of savings.

The Office performed an audit of appellant's case and found that an incorrect pay rate had been used in computing his insurance costs. The Office noted that appellant was receiving the maximum pay for compensation purposes and, therefore, was not entitled to additional compensation.[1]

In an August 3, 1998 letter, an Office claims examiner indicated that there might have been an error in computing appellant's compensation because the pay rate used to calculate the overpayment may have been too low. The claims examiner stated that she was voiding the current overpayment decision while the issue was investigated.

In a February 14, 2001 letter, the Office informed appellant that it had made a preliminary finding that he had received a $1,958.23 overpayment in compensation because incorrect deductions were made from life insurance between the period August 1, 1998 to August 12, 2000 and were based on an incorrect salary base. In an accompanying memorandum, the Office stated that the life insurance deductions were based on an incorrect annual wage of $96,594.00 rather than the correct annual wage of $99,397.00. The Office again found that appellant was without fault in the creation of the overpayment. The Office once again informed appellant of his right to request waiver of recovery of the overpayment.

Appellant again requested waiver of recovery of the overpayment. He indicated that he had no income outside of his compensation payment. He reported monthly expenses of $1,485.98 in mortgage, including a second mortgage, $700.00 in food, $50.00 in clothing, $349.00 in utilities and $2,407.00 in other expenses including household expenses and medical expenses not covered by insurance. Appellant also reported that he paid $550.00 in alimony and $758.00 on credit card debt. He concluded that he had $6,299.98 in total monthly expenses. Appellant stated that he had total assets of $6,150.00.

[1] Under 5 U.S.C. § 8112, compensation may not be more that the 75 percent of the monthly pay at the maximum rate of basic pay for a GS-15.

In a July 23, 2001 decision, the Office found that appellant had received a $1,958.23 overpayment in compensation. The Office denied appellant's request for waiver of recovery of the overpayment because his asset base was over $5,000.00 so recovery of the overpayment would not defeat the purpose of the Act.

The Board finds that appellant received an overpayment in compensation.

Under the Federal Employees' Group Life Insurance Plan (FEGLI) program, most civilian employees of the federal government are eligible to participate in basic life insurance and one or more of the options.[2] The coverage for basic life insurance if effective unless waived[3] and the premiums for basic and optional life coverage are withheld from the employee's pay.[4] The Act 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 conditions and may also retain the optional life insurance.[5] At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationer" status. If the compensationer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationer will be used to withhold premiums from his or her compensation payments.[6] Thus, while receiving compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums. 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 the Office of Personnel Management upon discovery of the error.[7]

The case record shows that appellant, while a federal employee, had basic life and optional life insurance through FEGLI. He began receiving temporary total disability compensation effective June 28, 1998. Appellant's life insurance premiums were to be automatically continued from his employment when be began receiving temporary total disability compensation. However, deductions were not made for his life insurance premiums. There is no indication from the record that appellant withdrew from or cancelled his life insurance when he began receiving temporary total disability compensation.[8] He, therefore, is responsible for such life insurance premiums.[9]

The Board, however, finds that the case is not in posture for decision on the matters of the amount of the overpayment or whether recovery of the overpayment should be waived.

[2] 5 U.S.C. § 8702(a).

[3] 5 U.S.C. § 8702(b).

[4] 5 U.S.C. § 8707.

[5] 5 U.S.C. § 8706(b)(2).

[6] 5 U.S.C. § 8706(b)(3).

[7] 5 U.S.C. § 8707(d); s*ee James Lloyd Otte*, 48 ECAB 334 (1997).

[8] *See* 5 U.S.C. §§ 8706; 8714a; 8714b.

[9] *Glen B. Cox*, 42 ECAB 703 (1991).

In this case, appellant stopped working on February 5, 1998. At that time, his annual pay rate was $99,397.00, having been raised from $96,594.00 January 4, 1998. The Office, however, paid appellant's compensation based on the annual wage of $96,594.00. The Office subsequently found that deductions for his life insurance had been based on the lower pay rate and, therefore, recomputed the deductions based on the higher pay rate. The Office, however, did not explain in detail how the insurance premiums were calculated on the basis of appellant's differing pay rates and, therefore, resulted in an overpayment of compensation. As the Board cannot determine how the Office calculated the amount of the overpayment, the case must be remanded for a detailed explanation by the Office on how the amount of the overpayment was calculated.

The Office stated that appellant's compensation payments would not be adjusted because he was receiving the maximum compensation allowed by section 8112 of the Act. That section provides that compensation cannot exceed 75 percent of the maximum basic pay for the highest level of a GS-15. The record shows that appellant was receiving the maximum basic pay of a GS-15. Under applicable FECA Bulletins, the maximum compensation rate was to be $5,892.94 a month as of March 1, 1998,[10] $6,075.06 a month as of January 4, 1999[11] and $6,306.06 a month as of January 3, 2000.[12] The Board, however, cannot determine from the record whether appellant's compensation payments were proper. The record shows that the gross amount of his periodic checks for each 28-day period were $5,439.64 after June 28, 1998, $5,607.76 after January 3, 1999 and $5,821.00 after January 3, 2000. The Board is unable to determine if appellant's compensation was appropriate or was underpaid during the period in question. The Board, therefore, cannot determine whether appellant received an underpayment of compensation that would offset the overpayment in compensation caused by the failure to deduct the appropriate life insurance premiums. For this reason, the case will be remanded for further development on the issues of amount of the overpayment and eligibility for waiver.

[10] FECA Bulletin No. 98-2 (March 1, 1998).

[11] FECA Bulletin No. 99-17 (January 4, 1999).

[12] FECA Bulletin No. 00-7 (January 3, 2000).

The decision of the Office of Workers' Compensation Programs, dated July 23, 2001, is affirmed, in part and set aside, in part and remanded for further action as set forth in this decision.

Dated, Washington, DC
August 28, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member