

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCHERRIE L. STANLEY and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 01-495; Submitted on the Record;
Issued March 8, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of \$2,764.65 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 \$100.00 per month from appellant's continuing compensation to recover the overpayment.

The Office accepted that on September 15, 1994 appellant, then a 37-year-old mailhandler, sustained a cervical strain. The claim was expanded to include a herniated nucleus pulposus at C5-6 with a resultant anterior cervical discectomy with fusion of C5-6 performed on March 28, 1996. Appellant stopped working on March 28, 1996 and returned to work with restrictions on July 19, 1996. Appellant stopped working on July 20, 1996 and has not returned.

On August 4, 2000 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 March 15, 1997. In an internal memorandum dated September 27, 2000, an Office claims examiner noted that appellant owed postretirement life insurance premiums retroactive from March 15, 1997 through September 9, 2000 and calculated the amount to be withheld was \$5.58 biweekly for basic life and \$33.84 biweekly for postretirement basic life. In a worksheet dated October 12, 2000, the Office computed the amount of insurance premiums, which should have been deducted for the period March 15, 1997 through September 9, 2000 for basic life and postretirement basic life insurance premiums.

On October 12, 2000 the Office notified appellant of its preliminary determination that she had received a \$2,764.65 overpayment because premiums for her postretirement optional life insurance were not deducted from her disability compensation from March 15, 1997 through September 9, 2000. The Office found appellant to be without fault in the creation of the overpayment. The Office requested that appellant indicate whether she wished to contest the

existence or amount of the overpayment or request waiver of the overpayment on an attached Office form.¹

In a response dated October 30, 2000, appellant requested waiver and submitted a completed overpayment recovery questionnaire and copies of bank statements along with a statement outlining why waiver should be granted. Appellant also submitted an Office form, in which she checked the box indicating that she was requesting waiver of the overpayment and a telephone conference in this regard. The entire packet of information was date-stamped as received by the Office on November 2, 2000.

By decision dated November 14, 2000, the Office finalized its preliminary determination that appellant received an overpayment in the amount of \$2,764.65 and that she was without fault in the creation of the overpayment. The Office determined that the circumstances of appellant's case did not warrant waiver of recovery of the overpayment as her monthly income exceeded her expenses by \$474.58. The Office determined that recovery of the overpayment would be made from appellant's continuing compensation at a rate of \$100.00 every 28 days.

The Board finds that the Office properly determined that appellant received an overpayment of \$2,764.65 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.² The coverage for basic life is effective unless waived,³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴

The Federal Employees' Compensation Act⁵ 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 conditions⁶ and may also retain the optional life insurance.⁷ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.⁸ If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the

¹ The form provides a claimant with three choices: (1) A request of waiver and a telephone conference; (2) a request of waiver with the Office making the decision on the written record; and (3) a request of waiver with a hearing before the Branch of Hearings and Review. With each of these choices, a claimant is to provide supporting financial documents.

² Part 870 -- Basic Life Insurance, subpart B -- Coverage; *see* 5 C.F.R. § 870.201.

³ 5 U.S.C. § 870.204(a).

⁴ 5 C.F.R. § 870.401(a).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 C.F.R. § 870.701, subpart G.

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

⁸ 5 C.F.R. § 870.501.

compensation was an employee will be used to withhold premiums from his or her compensation payments.⁹ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹⁰

In this case, OPM notified the Office that effective March 15, 1997 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.¹¹ 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 March 15, 1997 through September 9, 2000 and found that appellant received an overpayment of compensation in the amount of \$2,764.65.

The Board further finds that the case is not in posture for decision regarding whether the Office properly refused to waive recovery of the overpayment.

Section 8129(a) of the Act¹² 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 as follows 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 Act] or would be against equity and good conscience."¹³

In this case, appellant completed an Office overpayment recovery form, in which she requested a telephone conference to address her request for a waiver of her overpayment. The Office, however, did not conduct a telephone conference before denying appellant's request for waiver. The Board, therefore, finds that appellant was not provided the opportunity to present testimonial evidence regarding her requested waiver. Consequently, the case will be remanded for the Office to consider appellant's request for a telephone conference regarding waiver of the overpayment. Following this and such other development as deemed necessary, the Office shall issue an appropriate decision regarding this aspect of the claim.

⁹ 5 C.F.R. § 872.410, subpart D.

¹⁰ *Glen B. Cox*, 42 ECAB 703 (1991).

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

¹² 5 U.S.C. §§ 8101-8193; § 8129(a).

¹³ 5 U.S.C. § 8129(b).

The November 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed with regard to the fact and amount of the overpayment in compensation; the decision is set aside for further development with regard to waiver of the overpayment.

Dated, Washington, DC
March 8, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member