

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE E. CHARLAND and DEPARTMENT OF THE ARMY,  
MICHAEL ARMY AIRFIELD, Dugway, UT

*Docket No. 02-2364; Submitted on the Record;  
Issued July 7, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of \$7,383.30 due to incorrect deductions for life insurance premiums; (2) whether the Office properly denied waiver of recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$78.46 every four weeks from appellant's continuing compensation.

On November 12, 1986 appellant, then a 61-year-old lead firefighter, sustained a traumatic injury to his back while in the performance of duty. The Office accepted appellant's claim for herniated nucleus pulposus at L4-5 and spondylolisthesis. Additionally, appellant underwent several surgical procedures, which the Office authorized. Appellant did not return to work following his November 12, 1986 injury. The Office placed appellant on the periodic roll effective February 15, 1987 for total disability.

Beginning February 15, 1987 and continuing through March 10, 1990, the Office deducted a total of \$6,000.00 from appellant's wage-loss compensation for optional life insurance (OLI) coverage premiums.<sup>1</sup> On June 13, 2000 the Office refunded \$3,825.00 of the previously withheld OLI premiums. The refund represented premiums paid for the period March 31, 1988 through March 10, 1990. The Office refunded the premiums on advice from the Office of Personnel Management (OPM) that appellant was no longer eligible for life insurance coverage.<sup>2</sup>

In a letter dated July 12, 2000, OPM advised the Office that appellant was, in fact, eligible for continued coverage under the Federal Employees' Group Life Insurance (FEGLI)

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<sup>1</sup> Appellant received compensation payments every four weeks and the Office deducted insurance premiums of \$150.00 from each of the 40 payments appellant received for the period February 15, 1987 through March 10, 1990.

<sup>2</sup> The Office indicated that OPM advised that appellant had forfeited his eligibility for life insurance coverage when he opted to withdraw his retirement contributions effective March 31, 1988.

program. OPM further instructed the Office to deduct premiums under “Code I” for “Basic[,] Option B 1 times salary [and] Option C Family.” Additionally, the July 12, 2000 letter explained that basic coverage was free as appellant’s compensation commenced prior to January 1, 1990 and that appellant elected “NO REDUCTION” for postretirement basic life insurance coverage. OPM identified February 9, 1988 as the commencement date for appellant’s postretirement deductions.<sup>3</sup> Finally, OPM stated that deductions for optional coverage premiums should begin on the commencing date and that optional coverage was free at age 65, which appellant attained on February 9, 1990.<sup>4</sup> Effective September 9, 2001, the Office began deducting a retirement premium of \$50.76 every four weeks.

On September 10, 2001 the Office notified appellant of its preliminary determination that he had received a \$4,115.10 overpayment because incorrect premiums had been deducted for OLI and no premiums were deducted for postretirement basic life insurance from February 9, 1988 to September 8, 2001. Additionally, the Office stated that it had made a preliminary finding that appellant was without fault in creating the overpayment. In an accompanying memorandum, the Office noted that appellant had paid \$6,000.00 in premiums (OLI) during the period February 15, 1987 through March 10, 1990. The Office further noted that the OLI Code I premium for the period February 15, 1987 through January 12, 1991, when appellant “turned 65 years old” was \$2,366.40.<sup>5</sup> Additionally, the Office calculated that, for the period February 9, 1988 to September 8, 2001, appellant owed premiums of \$7,748.70 for postretirement, basic life coverage with a no reduction election. Basic life and OLI premiums totaled \$10,115.10 and the Office reduced this amount by \$6,000.00, which represented the previously withheld OLI premiums for the period February 15, 1987 through March 10, 1990.

On October 8, 2001 appellant requested a waiver of the overpayment and a prerecoupment hearing before the Branch of Hearings and Review. In a letter dated February 5, 2002, the Office hearing representative advised appellant that the Office had incorrectly calculated the amount of the overpayment and that instead of a \$4,115.10 overpayment previously noted, appellant actually received an overpayment of \$7,383.30 as the Office had neglected to account for the \$3,825.00 OLI premium refunded to appellant on June 13, 2000. The hearing representative noted that, while OLI premiums should have ceased effective February 9, 1990 when appellant reached the age of 65, the Office’s prior calculation included premiums through January 12, 1991, resulting in an overcharge of \$556.80.

At the March 26, 2002 hearing, appellant appeared with his spouse and counsel. Appellant’s counsel acknowledged receipt of the hearing representative’s February 5, 2002 correspondence, and neither he nor appellant specifically challenged the amount of overpayment. Appellant and his wife testified regarding their assets, monthly income and expenses. The testimony revealed that, after payment of all monthly expenses, appellant and his spouse had a

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<sup>3</sup> Appellant, born on February 9, 1925, attained the age of 63 on February 9, 1988.

<sup>4</sup> OPM also instructed the Office to investigate whether it had improperly deducted premiums for Option A-Standard and Option B-Additional 4 times salary.

<sup>5</sup> Appellant attained the age of 65 on February 9, 1990.

cash reserve of approximately \$1,000.00, which was held for emergencies. Appellant, however, did not submit any documentation regarding his family's assets or monthly expenses.

In a decision dated June 17, 2002, the Office hearing representative found that appellant received an overpayment of \$7,383.30, and that, while appellant was not at fault in creating the overpayment, he was not entitled to a waiver of recovery of the overpayment. The hearing representative also determined that the overpayment would be repaid by deducting \$78.46 every four weeks from appellant's continuing compensation payments.

The Board finds that the Office properly determined that appellant received an overpayment of \$7,383.30 due to incorrect deductions for life insurance premiums.

When FEGLI premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because the Office must pay the full premium to OPM upon discovery of the error.<sup>6</sup> The Office hearing representative properly set forth his calculations in determining the amount of overpayment due to the incorrect withholding of OLI premiums and the failure to withhold premiums for appellant's postretirement basic life insurance coverage. While the Office had initially calculated a \$4,115.10 overpayment, the hearing representative's February 5, 2002 correspondence and the subsequent June 17, 2002 decision clearly explained how appellant received an overpayment of \$7,383.30. OLI premiums for the period beginning February 15, 1987 through appellant's 65<sup>th</sup> birthday on February 9, 1990 were calculated to be \$1,809.60. Premiums for postretirement basic life insurance coverage with a no reduction election amounted to \$7,748.70 for the period February 9, 1988 through September 8, 2001. The combined premiums equaled \$9,558.30. Although appellant originally paid \$6,000.00 in OLI premiums, he received a partial refund of \$3,825.00 on June 13, 2000, thus, entitling appellant to a credit of \$2,175.00. This credit, when applied to the combined OLI and postretirement basic life premiums of \$9,558.30, results in an outstanding balance of \$7,383.30. Accordingly, the Board finds that the hearing representative's finding as to the amount of overpayment is supported by the record.

The Board further finds that the Office properly denied waiver of recovery of the overpayment.

Under section 8129 of the Federal Employees' Compensation Act, 5 U.S.C. § 8129(b), and the implementing regulations, an overpayment must be recovered unless 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.<sup>7</sup> Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.<sup>8</sup> In this instance, the Office determined that appellant was without fault in creating the overpayment. However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.<sup>9</sup> The Office must determine whether recovery

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<sup>6</sup> See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

<sup>7</sup> 20 C.F.R. §§ 10.430, 10.433, 10.434, 10.436, 10.437, 10.441(a) (1999).

<sup>8</sup> 20 C.F.R. § 10.433(a) (1999).

<sup>9</sup> *Jorge O. Diaz*, 51 ECAB 124 (1999).

of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>10</sup>

The applicable regulations 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 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.<sup>11</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>12</sup>

Appellant and his spouse testified that their only assets were their home, two motor vehicles and a checking account. However, appellant did not specify the value of his reported assets or provide any relevant documentation. With respect to his family's monthly income, testimony revealed that in addition to appellant's monthly compensation benefits he received \$334.00 from the Department of Veterans Affairs and \$831.00 in Social Security benefits. Appellant's spouse testified that she was presently unemployed. Appellant's monthly compensation benefits of \$1,905.84, in addition to the payments received from the Department of Veterans Affairs and the Social Security Administration, represented a total monthly income of \$3,070.84.

Neither appellant nor his spouse provided a detailed account of their monthly expenses. Appellant was instructed to submit the relevant documentation post hearing; however, the necessary information was not received by the Office prior to the issuance of the June 17, 2002 decision. Testimony at the hearing revealed monthly mortgage expenses of \$508.00 and home maintenance costs of approximately \$30.00 per month. Monthly car maintenance, including gasoline, was reported to be \$138.00. Appellant's spouse testified that their monthly grocery bill was between \$700.00 and \$750.00 and that she spent \$20.00 per month for water due to her medical condition. Appellant's counsel stated that appellant and his wife paid \$33.00 per month for television. The hearing testimony also revealed that appellant's spouse incurred regular medical expenses for a procedure identified as "Remicaid;" however, it is unclear what portion of this expense was covered by health insurance.

Based on the hearing testimony, appellant and his spouse have monthly expenses of at least \$1,481.00. This figure, however, does not include medical expenses, utilities and consumer debt. The exact value of appellant's reported assets is not evident from the record. As previously mentioned, appellant's monthly income totaled \$3,070.84. Appellant's spouse testified that, after payment of all monthly expenses, they had a cash reserve of \$1,000.00 to

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<sup>10</sup> 20 C.F.R. § 10.434 (1999).

<sup>11</sup> 20 C.F.R. § 10.436 (1999).

<sup>12</sup> 20 C.F.R. § 10.437 (1999).

\$1,200.00. The record in the instant case does not support a finding that recovery of the overpayment would either defeat the purpose of the Act or be against equity and good conscience. The financial information available does not demonstrate that appellant needs substantially all of his current income to meet current ordinary and necessary living expenses and there is no information concerning the value of appellant's reported assets. Additionally, while appellant alleged that he would experience severe financial hardship in attempting to repay the debt, he failed to submit adequate documentation in support of this allegation. Lastly, appellant did not claim that he gave up a valuable right or changed his position for the worse as a consequence of his receipt of the overpayment.

With respect to the hearing representative's decision to deduct \$78.46 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is in accordance with 20 C.F.R. § 10.441(a). This section authorizes the Office to recover an overpayment by decreasing later payments of compensation. In exercising its authority under section 10.441(a), the Office must take 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."<sup>13</sup> Given the limited financial information available, the Board finds that the hearing representative reasonably imposed a repayment schedule of \$78.46 every four weeks.

The June 17, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 7, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>13</sup> 20 C.F.R. § 10.441(a).