

FACTUAL HISTORY

The Office accepted that appellant sustained bilateral rotator cuff syndrome strain and a right knee strain as a result of his work injury of March 17, 1997 and paid appropriate benefits. Appellant was eventually retained on the periodic rolls and underwent vocational rehabilitation services in 1998.

On June 5, 2003 the Office determined that the position of telephone solicitor fairly and reasonably represented appellant's wage-earning capacity and reduced his compensation accordingly. The Office calculated that he would receive \$1,015.04 in wage-loss compensation every four weeks, less a health insurance premium of \$188.48 and less an optional life insurance premium.

On August 19, 2003 the Office informed appellant of its preliminary determination that an overpayment of compensation of \$857.66 had occurred because it failed to deduct premiums for optional life insurance from December 4, 1997 through July 12, 2003. The Office found that appellant was without fault in creating the overpayment and provided options for him to request a waiver of recovery of the overpayment within 30 days. The Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit financial documents in support of any request for waiver. He did not respond.

By decision dated September 22, 2003, the Office finalized the overpayment, finding that appellant was not at fault in creating the \$857.66 overpayment due to the underwithholding of life insurance premiums. The Office found that he was not entitled to waiver of the overpayment and that the overpayment was recoverable in the full amount.²

On appeal appellant argues that he timely responded to the Office and submitted evidence which the Board notes was telefaxed to the Office on October 6, 2003. The Board's jurisdiction, however, is limited to a review of that evidence which was before the Office at the time of its final decision. As this evidence was received after the Office issued the September 22, 2003 decision, it cannot be considered by the Board.³

LEGAL PRECEDENT- ISSUE 1

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.⁴ The coverage for basic life is effective unless waived⁵ and premiums for basic and optional life coverages are withheld from the employee's pay.⁶

² On October 15, 2003 the Office received correspondence and evidence from appellant requesting waiver.

³ 20 C.F.R. § 501.2(c).

⁴ See 5 C.F.R. §§ 870.201-.303.

⁵ See 5 C.F.R. § 870.301(a).

⁶ See 5 C.F.R. §§ 870.401-.404.

The Federal Employees' Compensation Act⁷ and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her life insurance coverage. 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 Office of Personnel Management upon discovery of the error.⁸

ANALYSIS -- ISSUE 1

The record reveals that appellant had an optional life premium which the Office had not been deducting for the period December 4, 1997 through September 12, 2003. The record reveals that for the period December 34, 1997 to April 24, 1999, appellant had a subscription deduction for optional life insurance in the amount of \$12.54, which multiplied by 16 pay periods, equated to \$200.64. For the period April 25, 1999 through January 25, 2003, the subscription deduction for optional life insurance was in the amount of \$11.78, which multiplied by 49 pay periods, equated to \$577.22. During the period January 26 to July 12, 2003, the subscription deduction for optional life insurance was \$11.40, which multiplied by 7 pay periods, equated to \$79.80. The total amount of optional life insurance premiums adds to \$857.66. The Office correctly determined that life insurance premiums for the above periods were not properly deducted from appellant's compensation, therefore, an overpayment in the amount of \$857.66 was created. Appellant has not contested the amount of the overpayment and there is no evidence to indicate a contrary amount. An overpayment of compensation in the amount of \$857.66, was created during the period December 4, 1997 to July 12, 2003, when the Office failed to deduct premiums for optional life insurance from appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

An overpayment of compensation based on underwithholding of health insurance or life insurance is subject to the waiver provisions of 5 U.S.C. § 8129 and the applicable federal regulation relative to overpayments and collection of debts.⁹

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹⁰ If the Office finds that the

⁷ 5 U.S.C. §§ 8101-8193.

⁸ See 5 C.F.R. § 890.502; *James Lloyd Otte, supra id.*

⁹ See *Jan K. Fitzgerald*, 51 ECAB 659 (2000); *James Lloyd Otte, supra note 12*; *Glen B. Cox*, 42 ECAB 703 (1991).

¹⁰ 20 C.F.R. § 10.433(a).

recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹¹

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.¹²

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.¹³

ANALYSIS -- ISSUE 2

Appellant was found to be without fault in the creation of the overpayment. The Board notes that he was advised by the Office on August 19, 2003 that if he wanted to request waiver, he needed to provide the necessary financial information by completing an overpayment recovery questionnaire and submit it within 30 days. Appellant, however, failed to submit the overpayment recovery questionnaire or provide any financial information prior to the issuance of the Office's September 22, 2003 decision. Although appellant argued on appeal that he had timely submitted such information by certified mail on August 28, 2003 the record reflects that the Office received evidence on October 15, 2003. This evidence is clearly outside the 30-day time limit provided by section 10.438(b).¹⁴ As a result, the Office did not have the necessary

¹¹ *Id.* at § 10.434. 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: (a) 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 (b) the beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents. *Id.* at § 10.436. 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. *Id.* at § 10.437(a). Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. *Id.* at § 10.437(b).

¹² *Id.* at § 10.438(a).

¹³ *Id.* at § 10.438(b).

¹⁴ 20 C.F.R. § 10.438(b).

financial information to determine whether recovery of the overpayment would defeat the purpose of the Act.¹⁵ Therefore, the Office acted properly in refusing to waive the recovery of the overpayment.

With respect to whether recovery would be against equity and good conscience, the Board notes that appellant has not alleged and the evidence does not demonstrate that he relinquished a valuable right or changed his position for the worse in reliance on the erroneous amount of compensation benefits received in this case without deduction of appropriate optional life insurance premiums. The Office did not have the necessary financial information to determine whether recovery of the overpayment would cause financial hardship or that he changed his position for the worse. Additionally, appellant has not submitted any evidence to show that he is entitled to waiver of recovery of the overpayment on the grounds that recovery would be against equity and good conscience. The Office, therefore, did not abuse its discretion in denying appellant's request for waiver of recovery of the overpayment on this ground

Appellant failed to submit any financial information required by section 10.438 necessary to determine whether he detrimentally relied on the overpayment.¹⁶ As such, the Office acted properly in refusing to waive the recovery of the overpayment on this ground.

As appellant has not shown that recovery would "defeat the purpose of the Act" or would "be against equity and good conscience" the Board finds that the Office properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The method by which the Office may recover overpayments is defined by regulation. The applicable regulation, 20 C.F.R. § 10.441(a), provides as follows:

"Whenever an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If 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 hardship."¹⁷

¹⁵ *Id.* at § 10.438 (1999) (which provides that, if additional financial information is not submitted or a precoupment hearing is not requested, within 30 days of the Office's preliminary overpayment determination, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The overpaid individual has the responsibility for providing the financial information as the Office may require); *see Robert B. Hutchins*, 52 ECAB 344 (2001); *John B. Moore*, 41 ECAB 804 (1990).

¹⁶ *Id.*

¹⁷ 20 C.F.R. § 10.441(a).

ANALYSIS -- ISSUE 3

In this case, the Office found that recovery of the overpayment would be made by appellant refunding the entire amount of \$857.66. He failed to present any financial information to enable the Office to determine his financial circumstances such that a payment in full would cause him undue financial hardship.¹⁸ The Office's procedure manual notes that if a claimant is being paid compensation or is due accrued benefits from the Office and does not respond to the preliminary overpayment decision, the debt should be recovered from such benefits as quickly as possible.¹⁹ The Board, therefore, finds that the Office did not abuse its discretionary authority in determining that the overpayment sum of \$857.66 could be repaid in full.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation of \$857.66 during the period December 11, 1997 through September 12, 2003 as the Office failed to deduct the correct premiums for basic life insurance from his compensation benefits. The Board further finds that the Office properly denied waiver of the overpayment of compensation. Lastly, the Board finds that the Office did not abuse its discretionary authority in determining that the overpayment sum of \$857.66 could be repaid in full.

¹⁸ In establishing the initial collection strategy, the Office must weigh the individual's income, ordinary and necessary expenses and assets in a manner similar to the waiver considerations. When an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collections guidelines, which state in general, that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly. *Gail M. Roe*, 47 ECAB 268 (1995); *see Nina D. Newborn*, 47 ECAB 132 (1995).

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) and 6.200.4.d(1)(b) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 22, 2003 is hereby affirmed.

Issued: April 29, 2004
Washington, DC

Colleen DuffyKiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member