

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**OUSLEY PERKINS, JR., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Memphis, TN, Employer**

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**Docket No. 04-1343  
Issued: December 2, 2004**

*Appearances:*  
*Ousley Perkins, Jr., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On April 27, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated March 25, 2004, which found that he received an overpayment in the amount of \$8,397.41 and was not entitled to waiver. The Office deducted \$167.00 per month from appellant's continuing compensation payments to recover the overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this overpayment case.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$8,397.41; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly determined that the overpayment would be recovered by deducting \$167.00 from appellant's continuing compensation payments.

## **FACTUAL HISTORY**

On September 21, 1967 appellant, then a 40-year-old mailhandler, filed a claim alleging that on March 13, 1967 he hurt his back while lifting mail. On July 31, 1969 the Office accepted appellant's claim for aggravation of lumbar degenerative disc disease, lumbosacral strain superimposed on degenerated discs at L4-5 and traumatic neurosis with anxiety.

On December 4, 2003 the Office received letters from the Office of Personnel Management (OPM) requesting that a determination be made as to whether appellant's basic and optional life insurance premiums were being deducted from his compensation. On December 16, 2003 the Office computed appellant's life insurance premiums based on an annual salary of \$29,000.00. The Office's worksheet indicated that appellant should have \$3.20 deducted for 560 days between July 16, 1981 and January 26, 1983; \$7.50 for 476 days between January 27, 1983 and May 16, 1984; \$6.00 for 808 days between May 17, 1984 and August 2, 1986; \$4.50 for 532 days between August 3, 1986 and January 16, 1988; \$7.00 for 1536 days between January 17, 1992 and February 6, 1993; and \$7.00 for 254 days between May 29, 1992 and February 6, 1993 for a total of \$1,795.29. After his retirement from the employing establishment, appellant should have \$.78 deducted for 2,100 days between July 5, 1993 and April 24, 1999; \$0.94 for 1,374 days between April 24, 1999 and December 31, 2002; and \$0.85 for 333 days between January 1 and November 29, 2003 for a total of \$6,602.12.

By letter dated January 16, 2004, the Office advised appellant of a preliminary determination that an overpayment of compensation had occurred in the amount of \$8,397.41. The Office stated that the overpayment occurred because optional life insurance premiums were not deducted for the period July 16, 1981 through March 31, 1992 and from May 29, 1992 through February 6, 1993.<sup>1</sup> Further, the Office stated that postretirement insurance premiums were not deducted for the period July 25, 1993 through November 29, 2003.<sup>2</sup> The Office found that appellant was without fault in the creation of the overpayment and he was advised to submit evidence with respect to waiver of the overpayment within 30 days. Appellant did not respond within the allotted time period.

By decision dated March 25, 2004, the Office finalized the determination that an overpayment of \$8,397.41 was created. The Office denied waiver of the overpayment on the grounds that appellant did not respond to the preliminary overpayment decision and he was being paid compensation on the periodic roll. Further, the Office determined that the overpayment would be repaid by deducting \$167.00 every month from appellant's continuing compensation.<sup>3</sup>

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<sup>1</sup> The Office noted that the overpayment, which occurred during the period April 1 through May 28, 1992, was previously waived.

<sup>2</sup> The Office noted that the overpayment for the period April 1, 1992 through July 24, 1993 was previously waived.

<sup>3</sup> On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

## 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.<sup>4</sup> The coverage for basic life insurance is effective unless waived<sup>5</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</sup> The Federal Employees' Compensation Act<sup>7</sup> and its implementing regulation provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain conditions<sup>8</sup> and may also retain the optional life insurance.<sup>9</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensation chose to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>10</sup> 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 OPM upon discovery of the error.<sup>11</sup>

## ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant was overpaid compensation in the amount of \$8,397.41. The overpayment occurred as a result of the Office's failure to deduct optional life insurance premiums for the period July 16, 1981 through March 31, 1992 and May 29, 1992 through February 6, 1993 and postretirement insurance premiums for the period July 25, 1993 through November 29, 2003. The Office explained its calculations regarding appellant's optional life insurance premiums, noting that \$3.20 should have been deducted for 560 days between July 16, 1981 and January 26, 1983; \$7.50 for 476 days between January 27, 1983 and May 16, 1984; \$6.00 for 808 days between May 17, 1984 and August 2, 1986; \$4.50 for 532 days between August 3, 1986 and January 16, 1988; \$7.00 for 1536 days between January 17, 1992 and February 6, 1993; and \$7.00 for 254 days between May 29, 1992 and February 6, 1993 for a total of \$1,795.29. Regarding appellant's postretirement insurance premiums the Office noted that \$.78 should have been deducted for 2,100 days between July 5, 1993 and April 24, 1999; \$0.94 for 1,374 days between April 24, 1999 and December 31, 2002; and \$0.85 for 333 days between January 1 and November 29,

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<sup>4</sup> 5 U.S.C. § 8702(a).

<sup>5</sup> 5 U.S.C. § 8702(b).

<sup>6</sup> 5 U.S.C. § 8707.

<sup>7</sup> 5 U.S.C. § 8706(b)(2).

<sup>8</sup> 5 C.F.R. § 870.701, subpart G.

<sup>9</sup> 5 C.F.R. §§ 871.201, subpart B; 872.201, subpart B; 873.203, subpart B.

<sup>10</sup> 5 U.S.C. § 8706(b)(3).

<sup>11</sup> 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

2003 for a total of \$6,602.12. As appellant continued to receive the benefits of life insurance, but these amounts were not deducted from his compensation, the Office properly found that he was overpaid in the amount of \$8,397.41.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(b) of the Act provides as follows: “Adjustment 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 this subchapter or would be against equity and good conscience.”<sup>12</sup> No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.<sup>13</sup>

Sections 10.441(a) of the regulation provides that where an overpayment has been made to an individual by reason of an error of fact or law, such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same.<sup>14</sup> However, section 8129(b) provides “[a]djustment or recovery by the United States may not be made when incorrect payment had 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>15</sup>

The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.436 and 10.437 of Title 20 of the Code of Federal Regulations. Section 10.436(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses<sup>16</sup> and if the individual’s nonexempted assets do not exceed a resource base determined by the Office with advice from the Department of Labor’s Bureau of Labor and Statistics.<sup>17</sup> An overpaid individual must meet both of these criteria in order to establish financial hardship. Section 10.437(b) also provides that recovery of an overpayment is considered to be against equity and good conscience if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.<sup>18</sup>

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<sup>12</sup> 5 U.S.C. § 8129(b).

<sup>13</sup> *Gregg B. Manston*, 45 ECAB 344 (1994).

<sup>14</sup> 20 C.F.R. § 10.441(a).

<sup>15</sup> *Supra* note 12.

<sup>16</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses, *i.e.*, ordinary and necessary living expenses plus \$50.00.

<sup>17</sup> 20 C.F.R. § 10.436(a).

<sup>18</sup> *Id.* at § 10.437(b).

Section 10.438 of the regulation provides that “the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office].... (b) failure to submit the requested information within 30 days of the request will result in denial of waiver....”<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

In this case, appellant was advised by the Office to provide the necessary financial information by completing the overpayment recovery questionnaire, Form OWCP-20, issued on January 16, 2004, if he wanted to request waiver. He failed to submit a completed Form OWCP-20 or otherwise submit any financial information to the Office. As a result, the Office properly applied section 10.438(b) of the regulations in denying waiver.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board’s jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.<sup>20</sup> Section 10.441(a) of the regulation<sup>21</sup> provides:

“When 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 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 any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the [Act] with respect to the individual’s death.”<sup>22</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive compensation under the Act. When an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection 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.<sup>23</sup> The Board finds that the Office did not abuse its discretion in following those guidelines in this case and deducting \$167.00 every month from appellant’s continuing compensation benefits.

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<sup>19</sup> *Id.* at § 10.438.

<sup>20</sup> *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>21</sup> 20 C.F.R. § 10.441(a).

<sup>22</sup> *Id.*

<sup>23</sup> *Gail M. Roe*, 47 ECAB 268 (1995); *Robin D. Calhoun*, Docket No. 00-1756 (issued May 21, 2001).

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$8,397.41. The Board further finds that the Office did not properly deny waiver of the overpayment. Finally, the Office properly determined that the overpayment would be recovered by deducting \$167.00 from appellant's continuing compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member