

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

FREDDIE L. THOMAS, Appellant

and

**DEPARTMENT OF THE AIR FORCE, NAVAL
AIR STATION JOINT RESERVE BASE,
Fort Worth, TX, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 04-411
Issued: July 14, 2004**

Appearances:
Freddie L. Thomas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 4, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 24, 2003, which found that he received an overpayment in the amount of \$1,822.11, that appellant was without fault in the creation of the overpayment but denied waiver and recovery was set at \$50.00 every 28 days. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment of this case.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$1,822.11; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly decided to collect \$50.00 from each compensation check until this payment was recouped.

FACTUAL HISTORY

On May 2, 1997 appellant then a 52-year-old motor vehicle operator, filed a traumatic injury claim alleging that on April 28, 1997 while walking, he hit a wet spot and fell to the floor, thereby injuring his head, back and right side. The Office accepted appellant's claim for cervical and lumbar sprain and has authorized monetary and medical benefits for accepted conditions since 1997.

By letter dated September 9, 2003, the Office informed appellant that it had made a preliminary finding that he had been overpaid benefits in the amount of \$1,822.11. The Office noted that the overpayment occurred because basic life insurance premiums were not deducted from September 1, 1997 through June 14, 2003 and postretirement premiums were not deducted from September 13, 1998 through June 14, 2003.

In its worksheet wherein it determined that appellant had an overpayment of \$1,822.11, the Office noted that the "retired premium" was \$54.40 and that the "basic life" premium was \$9.30. It further noted:

"Claimant elected code R OLI which is basic plus Option B (3X), Option A and Option C, as well as postretirement no reduction, effective September 12, 1998. We collected Option B (5X), option A and Option C. So we owe claimant the difference between option B (5X) and Option B (3X). But claimant owes basic life insurance from [September 1, 1997 to June 14, 2003] and postretirement no reduction premiums from [September 13, 1998 to July 12, 2003]."

The Office then calculated that appellant paid option B at a multiple of five from September 1, 1997 to June 14, 2003, a total of \$5,228.30, when he should have paid option B at a multiple of three, for a total of \$2,634.36. The Office noted that appellant would therefore be entitled to a refund of \$2,593.94. However, the Office noted that appellant should have paid basic life from September 1, 1997 through June 14, 2003, but paid nothing and that the amount appellant should have paid for this was \$742.45. The Office then noted that appellant should have paid postretirement premiums from September 13, 1998 to June 14, 2003, but paid none and that this amounted to \$3,673.60. Giving appellant credit for the refund amount, the Office determined that appellant owed the Office \$1,822.11.

The records of the checks sent to appellant indicate that deductions were not made for basic life insurance from September 1, 1997 through June 14, 2003 and were made thereafter. The record also contains a letter to the Office from the Office of Personnel Management (OPM) indicating that appellant elected to continue Federal Employees' Group Life Insurance (FEGIL) based on a final salary of \$29,405.83 and that the commencing date of his postretirement deductions was September 12, 1998. By letter to appellant dated May 9, 2001, OPM indicated that appellant should have deductions made for basic no reduction, option A standard coverage, option B-3 multiples additional coverage and option C -- 1 multiple family coverage.

By letter dated September 15, 2003, appellant requested waiver. Appellant noted that he was not at fault as he did not know how much money was to be deducted from his check and that it was beyond his financial capabilities to repay the overpayment. In response to an overpayment

recovery questionnaire, appellant indicated that his monthly income was \$1,312.00 for his wife's unemployment and \$600.00 for his disability.¹ He listed his monthly expenses as \$680.03 for his house, \$300.00 for food, \$250.00 for clothing, \$45.00 for water, \$90.00 for telephone, \$193.00 for other utilities. Monthly debt payments were \$626.35, \$526.48 plus \$137.45 for payments to GMAC; \$168.71 for payment to CITI Financial; \$208.51 to All State Insurance; \$200.00 for other credit cards and \$138.00 to the Army, Air Force Exchange. He noted funds on hand as "none." Appellant submitted supporting documentation.

On October 24, 2003 the Office determined that an overpayment existed in the amount of \$1,822.11, that appellant was not at fault in the creation of the overpayment, that waiver was denied and that a sum of \$50.00 would be withheld from appellant's continuing compensation payments until the overpayment was absorbed.

LEGAL PRECEDENT -- ISSUE 1

Under the 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 is effective unless waived³ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁴ The Federal Employees' Compensation Act 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 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 "compensation" status. If the compensationner chose to continue basic and option life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The case record shows that appellant, while a federal employee, had basic life and optional life insurance through FEGLI. Appellant's life insurance premiums were to be automatically continued when he began receiving temporary total disability compensation; but

¹ The Board notes that appellant also has income from his compensation checks in the amount of \$1719.28 every 28 days.

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); see *James Lloyd Otte*, 48 ECAB 334 (1997).

this was not done until June 15, 2003. As noted in OPM's May 9, 2001 letter, the retirement premium should have been deducted starting September 13, 1998; however, these deductions were not made until June 15, 2003. There is no indication from the record that appellant withdrew from or cancelled his life insurance. He is therefore responsible for such life insurance premiums. As these were not collected, the Office properly determined that an overpayment was created.

However, the Board finds that this case is not in posture for decision on the amount of the overpayment. The Office did not explain in detail how the insurance premiums were calculated. Although the Office submitted worksheets indicating the amount that the Office alleged should have been withheld, there is no further indication as to how this amount was calculated. For example, there is no evidence as to the source of the amount of the premiums. From the evidence in the record, the Board is unable to determine if the Office's calculation that appellant was overpaid in the amount of \$1,822.11 was correct. As the Board cannot determine how the Office calculated the overpayment, the case must be remanded for a detailed explanation by the Office on how the amount of the overpayment was calculated.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of the Act provides that where an overpayment of compensation has been made "because of error of fact or law," adjustment shall be made by decreasing later payments, to which an individual is entitled.⁸ Adjustment or recovery 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.⁹ No waiver of payment is possible if the claimant is not "without fault" in helping to create the overpayment.

Regarding waiver, section 10.434 of the Office's regulation provides that, if the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

“(a) Adjustment or recovery would defeat the purpose of the Act; or

“(b) Adjustment or recovery would be against equity and good conscience.”¹⁰

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purpose of the Act if the beneficiary needs substantially all of his current income to meet current ordinary and necessary living expenses¹¹ and the beneficiary's

⁸ 5 U.S.C. § 8129(a).

⁹ 5 U.S.C. § 8129(b).

¹⁰ 20 C.F.R. § 10.434.

¹¹ This occurs when monthly income does not exceed monthly expenses by more than \$50.00. *Jan K. Fitzgerald*, 51 ECAB 659, 661 (2000).

assets do not exceed a specified amount as determined by the Office.¹² Section 10.437 provides that recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when any individual in reliance on such payments gives up a valuable right or changes his or her position for the worse.¹³

ANALYSIS -- ISSUE 2

Appellant requested waiver on September 15, 2003. In response to an overpayment questionnaire, appellant listed his monthly income and expenses. In its decision, the Office properly noted that appellant was not at fault in the creation of the overpayment. However, the Office in its decision, merely concluded that appellant was not entitled to waiver without further explanation. The Office should have carefully evaluated appellant's financial information to determine whether appellant needs all of his income to meet his expenses. Accordingly, on remand, the Office shall fully address the issue of whether appellant is entitled to waiver of the overpayment.

CONCLUSION

The Office did not adequately explain how it arrived at its conclusion that appellant was overpaid in the amount of \$1,822.11 or why appellant was denied waiver of the overpayment.

¹² 20 C.F.R. § 10.436. This amount has been considered to be \$3,000.00 for an individual. *Jan K. Fitzgerald, supra* note 11.

¹³ 20 C.F.R. § 10.437.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed, as to fact, of overpayment and set aside as to amount and waiver and remanded for further consideration consistent with this opinion.

Issued: July 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member