

aggravation of his anxiety state caused by the pain of his injury. Appropriate medical and wage-loss benefits were paid.

On October 9, 2003 the Office noted that basic life insurance, effective January 1, 2003, was \$0.15, effective April 14, 1999 was \$0.155; effective January 10, 1993 was \$0.165 and effective January 1, 1990 was \$0.185. The computations of life insurance were based on an unadjusted salary of \$30,000.00 and an adjusted salary of \$33,000.00.

By letter dated October 16, 2003, the Office made a preliminary determination that appellant was overpaid compensation benefits in the amount of \$1,751.97. The Office noted that the overpayment occurred because basic life insurance premiums were not deducted from his compensation for the period April 6, 1991 through July 12, 2003.¹

On November 3, 2003 appellant responded to the Office's overpayment recovery questionnaire and requested waiver. Appellant listed his income as \$2,050.00 from his compensation benefits and \$300.00 to \$800.00 for his wife's commission, for a total monthly income of \$2,400.00 to \$2,900.00. He listed his monthly expenses as totaling "\$2,640.00 +/-."² He listed funds in the amount of \$300.00.

By decision dated November 28, 2003, the Office finalized the overpayment determination in the amount of \$1,751.97 and found that appellant was not at fault in the creation of the overpayment. However, the Office denied appellant's request for waiver.

LEGAL PRECEDENT -- ISSUE 1

A claimant entitled to disability benefits may retain his life insurance. At separation from the employing establishment, the life insurance will either terminate or be continued under "compensation" status. While receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance payments. If federal life insurance 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 the Office of Personnel Management upon discovery of the error.³

¹ The Office's worksheet indicated that appellant should have \$12.21 deducted for the 22 pay periods between April 6, 1991 and January 9, 1993 for a total of \$268.61; \$10.69 deducted for 82 pay periods from January 10, 1993 to April 24, 1999 for a total of \$892.98; \$10.23 for 49 pay periods from April 25, 1999 to January 25, 2003 for a total of \$501.27; and \$9.90 deducted for 9 pay periods from January 26 to July 12, 2003 for a total of \$89.10, for a total of \$1,751.97.

² Appellant listed monthly payments as follows: rent or mortgage: \$800.00; food: \$400.00; clothing: \$50.00; utilities: \$530.00, and other expenses, including insurance, diabetes medicine, hospital, travel, medical and supplies at \$340.00 per month. He listed his monthly payments on bills as \$230.00 for his car payment, \$25.00 for 1st Consumer's Credit Card, and \$265.00 for New Beginning Credit Card Service. Accordingly, appellant listed his monthly expenses as \$2,640.00.

³ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant was overpaid in the amount of \$1,751.97. The overpayment occurred as a result of the Office's failure to deduct basic life insurance premiums for the period April 6, 1991 through July 12, 2003. The Office explained its calculations, noting that \$12.21 should have been deducted for the 22 pay periods between April 6, 1991 and January 9, 1993 for a total of \$268.61; \$10.69 should have been deducted for 82 pay periods from January 10, 1993 to April 24, 1999 for a total of \$892.98; \$10.23 should have been deducted for 49 pay periods from April 25, 1999 to January 25, 2003 for a total of \$501.27; and \$9.90 should be deducted for 9 pay periods from January 26 to July 12, 2003 for a total of \$89.10, for a total of \$1,751.97. As appellant continued to receive the benefits of life insurance, but these amounts were not deducted from his compensation, the Office properly found that appellant was overpaid in the amount of \$1,751.97.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.⁴ These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states: "Adjustment or recovery [of an overpayment] by the United States may not be made when [an] 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."⁵ Since the Office found appellant to be without fault in the creation of the overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.436 of the implementing regulation⁶ 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: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or 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. An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁷

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience

⁴ See *Robert Atchison*, 41 ECAB 83 (1989).

⁵ See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

⁶ 20 C.F.R. § 10.436.

⁷ See *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

severe financial hardship attempting to repay the debt; and when an 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.⁸

Section 10.438 of the regulations provides that “[t]he 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.”⁹

ANALYSIS -- ISSUE 2

The Office properly determined that appellant was without fault in the creation of the overpayment as he did not know that his basic life premiums were not properly being deducted from the compensation payments. Accordingly, the Office proceeded to determine whether appellant was entitled to waiver of the overpayment. The Office acted within its discretion when it determined that appellant was not entitled to waiver due to financial hardship. Appellant submitted information that his income was between \$2,400.00 to \$2,900.00. He noted that his monthly income consisted of \$2,050.00 from his compensation payment and \$300.00 to \$800.00 for his wife’s commission. The Board notes that appellant did not submit any evidence of his wife’s income. Appellant indicated that his monthly expenses totaled \$2,640.00. Accordingly, as appellant’s expenses of \$2,640.00 were less than his income of \$2,850.00 by \$250.00, he has not established that he was entitled to a waiver based on financial hardship. There is no evidence in this case, nor did appellant allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received from April 6, 1991 through July 12, 2003.

Whether to waive recovery of an overpayment of compensation is a matter that rests within the Office’s discretion pursuant to statutory and regulatory guidelines. The issue on appeal, therefore, is whether the Office’s denial of waiver constituted an abuse of discretion.¹⁰ The Board finds that the Office acted within its discretion in denying waiver of the overpayment.

CONCLUSION

The Board hereby finds that the Office properly determined that appellant received an overpayment in the amount of \$1,751.97. Furthermore, as the evidence in this case fails to support that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Office did not abuse its discretion in denying waiver of the overpayment.

⁸ 20 C.F.R. § 10.437.

⁹ 20 C.F.R. § 10.438.

¹⁰ *James M. Albers, Jr.*, 36 ECAB 340, 344 (1984) and cases cited therein at note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2003 is affirmed.

Issued: July 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member