

at L4-5 and L5-S1. She returned to light-duty work on February 22, 2000 and full-time work on April 4, 2000. Commencing September 24, 2000, appellant began to receive compensation benefits at the augmented, three-quarters percent rate because her daughter was a dependent.

In a preliminary determination dated August 25, 2003, the Office found that appellant was overpaid benefits in the amount of \$1,073.78, because the Office failed to deduct basic life insurance premiums from her compensation. The Office found, based on a fiscal payment worksheet from the Employment Standards Administration (ESA) dated August 21, 2003, that the amount of appellant's basic life insurance premiums were \$157.41 from August 30, 1998 to April 24, 1999, \$805.07 from April 25, 1999 to January 25, 2003 and \$111.30 from January 26 to July 12, 2003 or a total of \$1,073.78. The Office found that appellant was without fault in the creation of the overpayment. The Office instructed her that she could request a telephone conference from the district office, request that the district office issue a final decision based on the written evidence of record or request a precoupment hearing. The Office also instructed appellant to complete the enclosed overpayment recovery questionnaire, OWCP-20, and to submit supporting financial documentation.

In an EN1032 form dated September 6, 2003, appellant indicated that her daughter, then 25 years old, was a dependent. She indicated that her daughter was an uncontrolled diabetic with a mild stroke and suffering from depression. By letter dated September 19, 2003, appellant indicated that her itemized monthly expenses were \$2,996.88, representing \$870.00 for her house payment, \$582.02 for her automobile payment, \$289.00 for utilities and trash, \$46.00 for telephone service, \$85.37 for medication and \$1,124.49 in credit card payments. She stated that she supported her daughter and granddaughter due to her daughter's health issues and recently had to provide for emergency surgery for her granddaughter. Appellant stated that she received an income of \$3,036.00, which only left \$39.12 for groceries, gasoline, clothing and other expenses.

In the OWCP-20 form dated September 19, 2003, appellant indicated that she had monthly income of \$3,036.00 and supported her 25-year-old daughter and her 3-year-old granddaughter. She indicated that her monthly expenses totaled \$2,996.88 as noted above. Appellant indicated that she had funds of \$55.00 representing \$30.00 in a checking account balance and \$25.00 in a savings account balance. She submitted copies of checks she had paid for her living expenses in 2003 from her account at the Bank of Oklahoma. Appellant also submitted evidence of her expenses for medication in 2002 and 2003.

By decision dated October 6, 2003, the Office finalized the overpayment determination, finding that an overpayment of \$1,073.78 was created and that appellant was without fault in the creation of the overpayment. The Office found, however, that she was not entitled to waiver of recovery of the overpayment. The Office noted that appellant requested waiver based on the fact that she only had \$39.12 per month to take care of gas, food, clothing and other expenses. The Office noted that she did not explain whether her daughter or granddaughter had any income from social security, wages or welfare. The Office found that appellant did not state whether all her bills were actually being paid each month, whether they were for her own individual needs or whether they included additional expenses for dependents. Appellant did not submit copies of her bills and did not present evidence showing how much she had in assets. The Office directed recovery of the overpayment in full.

By letter dated November 14, 2003, appellant stated that she was sending a check in the amount of \$1,073.78 to the Office and submitted a copy of the check and the postmark date. *i.e.*, November 14, 2003 on the envelope. She explained that she obtained the money from her father who had taken out a loan for that purpose. By letter dated November 30, 2003, the Office indicated that it had not received any payment from appellant.

By decision dated December 29, 2003, the Office directed recovery by deducting \$50.00 from appellant's continuing workers' compensation payments.

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 with one or more options.¹ The coverage for basic life is effective unless waived and premiums for basic and optional life are withheld from the employee's pay. Under the FEGLI program, insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments. The injured employee remains responsible for all insurance premiums.²

ANALYSIS -- ISSUE 1

The record indicates that appellant elected FEGLI coverage at the time she first became eligible. The ESA fiscal payment worksheet showed that appellant's basic life insurance premiums from August 30, 1998 to April 24, 1999 totaled \$157.41, from April 25, 1999 to January 25, 2003 totaled \$805.07 and from January 26 to July 12, 2003 totaled \$111.30. The total amount of the premiums which were not deducted from appellant's workers' compensation payments were \$1,073.78, (\$157.41 + \$805.07 + \$111.30). The record does not contain any evidence that she canceled or waived her life insurance. Since appellant is responsible for payment of her basic life insurance premiums while she was receiving workers' compensation, a total deduction of \$1,073.78 should have been made from August 30, 1998 to July 12, 2003 and an overpayment of \$1,073.78 was created. The Office's finding that an overpayment of \$1,073.78 was created is proper.

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.³ These statutory guidelines are found in section 8129(b) of the Federal Employee's Compensation Act which states: "Adjustments or recovery by the United States may not be made when incorrect payments 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."⁴ Since

¹ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

² *Howard R. Nahikian*, 53 ECAB ___ (Docket No. 01-138, issued March 4, 2002).

³ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

⁴ 5 U.S.C. § 8129(b).

the Office found that appellant was without fault in the matter 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 10.436⁵ provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship to a currently or formerly entitled beneficiary because “(a) [t]he 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) [t]he 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 \$50.00.⁶ Further, an individual’s assets must exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual’s assets not exempt from recoupment.⁷ Section 10.437⁸ states that recovery of an overpayment is also considered to be against good conscience if the 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.

In determining the amount of the employee’s income, the Board has held that total income includes “any funds which may be reasonably considered available for his or her use, regardless of source.”⁹ If the overpayment questionnaire appellant submits is lacking in essential information, the Office should advise her in writing of any specific deficiencies and afford her an opportunity to cure any such deficiencies.¹⁰ The Office must specifically request necessary additional information prior to denying waiver on the ground that such information is lacking.¹¹

ANALYSIS

The Office found that appellant was not entitled to waiver of recovery of the overpayment because she stated that she only had \$39.12 per month to take care of gas, food, clothing and other expenses, but did not explain whether her daughter or granddaughter had any income from social security, wages or welfare. The Office found that appellant did not state

⁵ 20 C.F.R. § 10.436

⁶ *Frederick Arters*, 53 ECAB ___ (Docket No. 01-1237, issued February 27, 2002): see *Howard R. Nahikian*, *supra* note 2.

⁷ *Id.*

⁸ 20 C.F.R. § 10.437.

⁹ *Adolphus Bennett*, 49 ECAB 595, 598 (1998); *Thomas Lee Jones*, 48 ECAB 666, 667 (1997); Federal (FECA) Procedure Manual, Part 6 -- Initial Overpayment Action, *Waiver of Recovery*, 6.200.6(a)(2) (September 1994).

¹⁰ *Connie L. Potratz-Hasson*, 42 ECAB 359, 363 (1991).

¹¹ *Id.*

whether all her bills were actually being paid each month, whether they were for her own individual needs or whether they included additional expenses for dependents. The Office stated that she did not submit copies of her bills and did not present evidence showing how much she had in assets.

In finding that appellant was not entitled to waiver of recovery of the overpayment, the Office did not specifically identify her total monthly income and expenses and the difference between them. The Office, therefore, implicitly found that appellant had at least \$50.00 more in income than expenses per month, but failed to explain the basis for this conclusion. It is an elementary principle of workers' compensation law, which the Board has often reiterated, that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.¹² In the September 19, 2003 OWCP-20, appellant indicated that her monthly income was \$3,036.00, her monthly expenses were \$2,996.88 and she had funds of \$55.00. She stated that she had only \$39.12 remaining for groceries, gasoline, clothing and other expenses. The Office stated that appellant did not say whether her bills were paid each month, but she clearly identified that the expenses she listed were monthly. It is unclear what the Office meant by stating that appellant did not submit copies of her bills. She submitted evidence to document her expenses. Appellant she listed several monthly payments for credit cards and submitted numerous copies of check payments to various entities and a statement of her medical expenses in 2002 and 2003. The Office noted that appellant did not list whether there were additional expenses for her dependents. Due to the lack of clarity and inconsistencies in the Office's findings on waiver of recovery of the overpayment, it is necessary to remand the case for the Office to make appropriate findings on the issue.

CONCLUSION

The Office properly determined that an overpayment of \$1,073.78 was created and that appellant was not at fault in the creation of the overpayment. The Office erred, however, in finding that she was not entitled to waiver of recovery as it did not provide a consistent and clear statement of reasons for its findings. On remand the Office should identify appellant's monthly income and monthly expenses, determine whether she submitted adequate documentation with specific references to the evidence in the record and determine whether the difference between her monthly income and expenses exceeded \$50.00. If the Office should determine that appellant is not entitled to waiver of recovery of the overpayment, it would need to readdress the amount appellant should repay to recover the overpayment and provide reasons for its findings. After further development it deems necessary, the Office should issue a *de novo* decision.

¹² *Robert L. Johnson*, 51 ECAB 480, 481 (2000); *Beverly Dukes*, 46 ECAB 1014, 1017 (1995); *Lynette Marie Torres*, 44 ECAB 968, 971-72 (1993). See 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the December 29 and October 6, 2003 decisions of the Office of Workers' Compensation Programs be affirmed in part, set aside in part, and remanded for further action consistent with this decision.

Issued: June 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member