

FACTUAL HISTORY

On February 7, 1995 appellant, then a 37-year-old paralegal specialist, filed an occupational disease claim alleging that repetitive typing and the computer work that she performed at work caused an injury to her wrists. She alleged that she first became aware of the injury on December 1, 1994. The Office accepted the claim for bilateral carpal tunnel syndrome and bilateral tenosynovitis of the wrists and authorized release surgeries. Appellant initially worked intermittently but later stopped work entirely and received medical and wage-loss benefits.¹

In fiscal payment and insurance worksheets dated August 18 and 25, 2003, the Office determined that appellant owed premiums for basic life insurance coverage premiums which were not deducted from her wage-loss compensation from May 31, 1996 through July 12, 2003. The documentation indicated that appellant had an adjusted annual salary of \$54,000.00 and would pay \$8.10 every 4 weeks for basic life insurance premiums. The Office calculated that, for the period May 31, 1996 through July 12, 2003, appellant owed a total of \$1,646.46 for basic life coverage premiums.

In a preliminary determination dated August 25, 2003, the Office advised appellant that she had received a \$1,646.46 overpayment because no basic life insurance premiums were deducted from her compensation for that period, however, that it had made a preliminary finding that appellant was without fault in creating the overpayment. The Office informed appellant that, if she believed that she should receive a waiver instead of repaying the overpayment, she should complete the recovery questionnaire form and submit documents such as income tax returns, bank statements, bills, canceled checks, pay slips and other records to support her claimed income and expenses.²

On August 28, 2003 appellant requested a waiver of the overpayment based on financial hardship. She indicated that she requested cancellation of her life insurance in December 1994 before she stopped work and had no idea why life insurance was reinstated from May 1996 through July 2003. Appellant did not complete the recovery questionnaire or submit the requested financial documents showing her monthly income and expenses. Instead, she submitted a written statement outlining her monthly income and expenses. Appellant noted that she that received \$3,013.76 per month from the Office as wage-loss compensation. She stated that she had monthly expenses of \$460.41 for mortgage, \$75.00 for telephone, \$50.00 to 100.00 for electricity, \$25.00 to 50.00 for water, \$200.00 for a hospital bill, \$900.00 for food, \$100.00

¹ In a decision dated December 20, 2001, the Office adjusted appellant's compensation on the basis that the medical evidence established that she was no longer totally disabled for work due to the effects of the December 1, 1994 employment injury. The Office reduced appellant's compensation based on a selected position as a research assistant determined during vocational rehabilitation. On February 18, 2003 the Office issued an order vacating the December 20, 2001 decision and temporary total disability compensation was reinstated retroactively to December 20, 2001.

² The Board notes that, previously on March 19, 1998, the Office made a preliminary determination that an overpayment occurred in appellant's case in the amount of \$2,657.14 because deductions for basic life insurance and postretirement life insurance premiums were not deducted until March 29, 1998 although deductions should have effective on March 2, 1996. The record does not reflect that a final decision was issued in this matter.

for car insurance, \$20.00 in clothing, \$600.00 in parental support for food and medication, \$60.00 for personal medication, \$50.00 for car repairs, \$30.00 for gas, \$100.00 for doctor's visits not covered by insurance, \$100.00 attorney's fees, \$100.00 house repairs, \$20.00 church donation and \$20.00 for psychotherapy. Appellant asserted that she assists her parents with the cost of medical bills and prescriptions and that she also pays attorney's fees for her previous claim with the Office.

In a decision dated October 2, 2003, the Office found that appellant received an overpayment of \$1,646.46 and that, while she was not at fault in creating the overpayment, appellant was not entitled to a waiver of recovery of the overpayment. The Office noted that appellant failed to submit information sufficient to support that repayment of the debt would result in financial hardship. The Office outlined from written documentation received from appellant that after payment of all necessary monthly expenses, which totaled \$1,575.00,³ appellant had a cash reserve of \$1,438.76 per month available for other uses. The Office further determined that the overpayment should be repaid in full within 30 days of the date of the decision and advised appellant that if she was unable to refund the entire amount that she should contact the Office within 30 days so that arrangements for recovery such as installment payments could be made.

LEGAL PRECEDENT -- Issue 1

Under the Federal Employees' Group Life Insurance Plan (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 insurance is effective unless waived⁵ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁶ The Act and its implementing regulations 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.⁷ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensation will be used to withhold premiums from his or her compensation payments.⁸ Thus, while receiving

³ The Office noted that appellant's list of monthly expenses included a total of \$600.00 per month for the support of her parents, which could not be considered because it did not fit the criteria of "individual needs." The Office also noted that the \$900.00 per month listed for food seemed exorbitant for one person and might have represented the costs for all three people in the house. In that case, it could not be considered as an "individual need." Further, the Office determined that it could not include one time expenses such as car or house repairs. The Office therefore determined that when adding up the "individual needs" expenses for appellant alone and allowing \$300.00 for her groceries, her necessary monthly expenses totaled \$1,575.00 per month.

⁴ 5 U.S.C. § 8702(a).

⁵ 5 U.S.C. § 8702(b).

⁶ 5 U.S.C. § 8707.

⁷ 5 U.S.C. § 8706(b)(2).

⁸ 5 U.S.C. § 8706(b)(3).

compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums. 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 Office of Personnel Management upon discovery of the error.⁹

LEGAL PRECEDENT -- Issue 2

Section 8129(a) of the Federal Employees' Compensation Act¹⁰ provides that, where an overpayment of compensation has been made "because of an error of fact or law," adjustments shall be made by decreasing later payments to which an individual is entitled.¹¹ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "[a]djustments 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."¹²

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.¹³ The Office must exercise its discretion to determine whether recovery of the overpayment would "defeat the purpose of the Act or would be against equity and good conscience," pursuant to the guidelines provided in sections 10.434-437 of the implementing federal regulations.¹⁴ As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.¹⁵

Office regulations provide 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.¹⁶ The Board has found that 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 \$50.00.¹⁷ Additionally, the guidelines for recovery of an overpayment from an

⁹ 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8129(a).

¹² 5 U.S.C. § 8129(b).

¹³ *James Lloyd Otte*, *supra* note 9; *see William J. Murphy*, 40 ECAB 569, 571 (1989).

¹⁴ 20 C.F.R. § 10.434-37 (1999).

¹⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁶ *Frederick Arters*, 53 ECAB ____ (Docket No. 01-1237, issued February 27, 2002).

¹⁷ *Id.*

individual who is without fault were meant to be read conjunctively and that the overpaid individual must meet both conditions to find that recovery of the overpayment should be waived on the basis that it would defeat the purpose of the Act. Consequently, to establish that recovery would defeat the purpose of the Act, the facts must show that appellant needs substantially all of his or her income to meet current ordinary and necessary living expenses and also that his or her assets, those which are not exempted, do not exceed a resource base.¹⁸

Office procedures provide that the finding that a type of expense is ordinary and necessary does not mean that the amount is ordinary and necessary. The burden is on the claimant to show that the expenses are normal and needed for a legitimate purpose. If the amount of certain expenses are found not to be ordinary and necessary, particularly regarding the significant expenses of food, clothing and vehicles, the Office must show in writing the reasons for this finding. The finding must be supported by clear and complete rationale, which may include reference to recognized research data (such as current statistics from the Bureau of Labor Statistics) which address averages or ranges of expenses for the general population relevant to the claimant's circumstances. Office procedures further indicate that care must be exercised to avoid counting an expense "twice" when totaling the claimant's ordinary and necessary living expenses. For example, the claimant's consumer debt (e.g., bank credit cards, department store charge cards, etc.) may consist largely or completely of items the claimant has already accounted for in his or her documentation of fixed and miscellaneous living expenses and may also include expenses which are not ordinary and necessary.¹⁹

LEGAL PRECEDENT -- Issue 3

Regarding refunds of the overpayment, section 10.441(a) states in relevant part:

"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 factors, so as to minimize any hardship."²⁰

ANALYSIS -- Issue 1

In this case, appellant stopped work from the employing establishment sometime following her December 1, 1994 work-related injury and under the Act was thereafter entitled to life insurance coverage. The record does not reflect that appellant waived the right to continue her basic life insurance after she stopped work and premiums for basic life insurance and

¹⁸ *John Skarbek*, 53 ECAB ____ (Docket No. 01-1396, issued June 21, 2002).

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- *Debt Management, Initial Overpayment Actions*, Chapter 6.200.6 (September 1994).

²⁰ 20 C.F.R. § 10.441(a) (1999).

postretirement life insurance were deducted for some period of time. Although appellant alleges on appeal that she cancelled her life insurance benefits in December 1994, there is no evidence of record supportive of this allegation. Beginning May 31, 1996 and continuing through July 12, 1996 basic life insurance premiums were not regularly deducted from appellant's compensation payments. The amount of life insurance premiums, which were not deducted, totaled \$1,646.46. Thus, an overpayment was created by the failure to withhold premiums for the insurance. The Board finds that this amount was properly computed.

ANALYSIS -- Issue 2

In determining that appellant was not entitled to a waiver of the overpayment, the Office first reviewed appellant's income and expenses submitted in written form. She failed to submit the requisite overpayment questionnaire and other documentary evidence of record which would have more accurately detailed her monthly income and expenses. The Board finds that it was permissible for the Office to lower some of appellant's monthly expenses such as groceries, to find that certain one-time expenses should not be included as "ordinary" and that her monthly contribution to her parents of \$600.00 was not an individual expense. Appellant is documented in the record as single with no dependants. Thus, it was reasonable for the Office to find that appellant's ordinary and necessary living expenses totaled \$1,575.00. As her reported income of \$3,013.76 per month²¹ exceeded her allowable monthly expenses by \$1,438.76 per month, the Office properly determined that appellant's income exceeded her ordinary and necessary living expenses. While appellant alleged that she would experience severe financial hardship in attempting to repay the debt, she failed to submit adequate documentation in support of this allegation. Furthermore, appellant submitted no evidence to establish that she relinquished a valuable right or changed her position for the worse in reliance on the overpaid compensation. The Office, therefore, properly found that recovery of the overpayment would not be against equity or good conscience. 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 Board finds that the Office did not abuse its discretion in denying a waiver.

ANALYSIS -- Issue 3

With respect to the Office's decision to request repayment of the \$1,646.46 overpayment in its entirety, the Board finds that such recovery of the overpayment is in accordance with section 10.441(a) of the Office regulations.²² Appellant failed to provide the Office with the financial information necessary to determine how much she could afford to repay from the net of \$2,997.56 in wage-loss compensation that she received every four weeks. Given the lack of information about appellant's financial situation and the need to recover the overpayment during a reasonable period of time, the Office reasonably imposed on appellant full repayment of the overpayment, with an opportunity to make other arrangements for recovery.

²¹ A compensation data form dated August 23, 2003 indicated that appellant's net compensation totaled \$2,997.56 every four weeks.

²² 20 C.F.R. §10.441(a) (1999).

CONCLUSION

The Board finds that appellant received an overpayment of \$1,646.46 in wage-loss compensation from the Office and that, while appellant was not at fault in the creation of the overpayment, she is not entitled to a waiver. Lastly, the Board finds that the Office properly required repayment by appellant of the overpayment in full.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 2, 2003 is affirmed.

Issued: March 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member