

1994, the Office adjusted appellant's compensation to reflect his wage-earning capacity as a clerk effective August 15, 1994. Appellant was placed back on the periodic rolls on July 25, 1995.

An interoffice memorandum dated July 17, 1992 refers to appellant's Federal Employees' Group Life Insurance (FEGLI) code, "R," enrollment. On October 9, 1992 the Office of Personnel Management (OPM) approved appellant's application for a disability retirement. A notification of personnel action, SF-50A, dated October 30, 1992 indicated that appellant had basic life insurance plus additional option with three times pay and standard and family options. Appellant elected to receive workers' compensation benefits in lieu of a disability retirement annuity. The record does not contain an election to decline or waive basic life insurance coverage from appellant.

A worksheet from the Employment Standards Administration (ESA) dated October 15, 2003 noted that appellant's life insurance premiums were \$242.72 from August 5, 1991 to January 9, 1993, \$1,109.46 from January 10, 1993 to April 24, 1999, \$622.79 from April 25, 1999 to January 25, 2003 and \$110.07 from January 26 to July 12, 2003. The ESA office added these amounts to obtain a total of \$2,084.32.

In a preliminary determination dated October 16, 2003, the Office found that an overpayment in the amount of \$2,084.32 was created because basic life insurance premiums were not deducted from his compensation payments for periods between August 5, 1991 to July 12, 2003. The Office found that appellant was without fault in the creation of the overpayment because it was due to an administrative error and there was no way appellant could have realized that his compensation payments were incorrect. The Office informed appellant that within 30 days of the date of the letter, he could request a telephone conference, request a final decision based only on the written evidence or request a precoupment hearing. The Office also informed appellant that he should complete the enclosed Overpayment Recovery Questionnaire, Form OWCP-20, and submit appropriate supporting documents.

On the OWCP-20 form dated November 13, 2003, appellant indicated that he had monthly income in the amount of \$5,975.80 representing \$1,595.00 in social security benefits, \$2,062.80 in welfare payments and \$2,318.00 in compensation benefits. He indicated that he had \$3,214.09 in monthly expenses representing \$870.99 in rent, \$150.00 in food, approximately \$450 in utilities, \$300.00 in miscellaneous expenses, \$701.97 for a truck, \$576.13 for a car, \$25.00 for hospital expense, \$60.00 for collection and \$80.00 for life insurance. Appellant indicated that he had cash on hand of \$20.00. In the most recent Form EN-1032 dated May 13, 2002, appellant indicated that he was married and his wife lived with him.

In a decision dated November 28, 2003, the Office finalized the overpayment determination, finding that an overpayment in the amount of \$2,084.32 was created and that appellant was without fault in the creation of the overpayment because he could not have known that the life insurance premiums were not properly deducted from his compensation. The Office noted that appellant requested a waiver of the overpayment based on hardship. The Office found, however, that appellant did not demonstrate that all the expenses listed on the OWCP-20 form were for meeting his personal needs excluding his wife's expenses. The Office noted that

appellant did not submit evidence of his wife's income. The Office concluded that it could not grant the hardship waiver due to the fact that appellant did not demonstrate that all his income was going to meet only his personal needs. The Office instructed appellant to repay the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Under the 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 insurance is effective unless waived and premiums for basic and optional life insurance 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 establish that appellant was enrolled in the FEGLI program for basic life insurance with an additional option for three times pay and the family and standard options. The Office determined that, from August 5, 1991 to July 12, 2003, the life insurance premiums that should have been deducted from appellant's compensation payments was \$2,084.32. Since appellant was responsible for payment of the life insurance premiums even while receiving workers' compensation benefits, he received an overpayment of compensation from August 5, 1991 to July 12, 2003 in the amount of \$2,084.32. The Office's finding that an overpayment of \$2,084.32 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 Employees' 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 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.

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).

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

ANALYSIS -- ISSUE 2

The Office addressed the creation of the overpayment, stating that the overpayment appellant received should have been paid for his life insurance premiums. Appellant was found not at fault in the creation of the overpayment as he was not aware the premiums were not being deducted from his compensation benefits. The Office noted that appellant requested a waiver of recovery of the overpayment based on hardship. The Office found that appellant did not demonstrate that all expenses listed on the completed OWCP-20 form were for meeting his personal needs excluding his wife’s expenses and he did not submit evidence concerning his wife’s income. The Office, therefore, found that it could not grant waiver.

Under these circumstances it was not necessary for the Office to consider whether appellant demonstrated that all his expenses were solely his own. Appellant filled out the Form OWCP-20 as requested and indicated that his monthly income of \$5,975.80 exceeded his monthly expenses of \$3,214.09 by \$2,761.71. Since appellant’s monthly income exceeded his monthly expenses by more than \$50.00, appellant has not shown that he needed substantially all of his income to meet current ordinary and necessary living expenses. Appellant also did not show that, in reliance on the payments he received, he gave up a valuable right or changed his

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 3.

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*, Chapter 6.200.6(a)(2) (September 1994).

position for the worse. Appellant has, therefore, not shown that he is entitled to waiver of recovery of the overpayment.¹⁰

CONCLUSION

The Board finds that the Office properly determined that an overpayment in the amount of \$2,084.32 was created from August 5, 1991 to July 12, 1993, because basic life insurance premiums were not deducted from appellant's compensation payments. The Board also finds that the Office properly determined that appellant was not entitled to waiver of recovery of the overpayment.

ORDER

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

Issued: May 5, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ Since the Office required appellant to repay the overpayment in a lump sum, the Board does not have jurisdiction over the means of recovery of the overpayment. The Board's jurisdiction is limited to instances, in which recovery is sought against continuing compensation benefits under the Act. See 5 U.S.C. § 8129; *Beverly E. Labbe*, 50 ECAB 440, 443 (1999); *Levon H. Knight*, 40 ECAB 658, 665 n. 6 (1989).