

traumatic stress disorder were causally related to his employment, the Board noted that appellant last worked at the employing establishment in August 1991; that he received compensation for temporary total disability on November 23, 1991, the first day he was in a leave-without-pay status; and that the employing establishment terminated his employment on April 30, 1993.¹

On October 30, 2003 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$3,112.40 that arose from the Office's failure to deduct premiums for basic life insurance from November 23, 1991 to September 6, 2003. The Office found that appellant was without fault in creating the overpayment, requested that he submit financial information to allow it to decide whether to waive recovery of the overpayment and advised him that it would deny waiver if he did not submit such information.

By response dated November 4, 2003, appellant requested that recovery of the overpayment be waived, but stated that he was not providing financial information because it was "not a consideration" and because the Office's CA-20 form requesting such information did not have a valid Office of Management and Budget number. In a November 5, 2003 letter, appellant contended that an overpayment of compensation did not exist because his injury occurred before January 1, 1990, entitling him to continue basic life insurance at no cost.

By final decision dated December 2, 2003, the Office found that appellant received an overpayment of compensation in the amount of \$3,112.40 that arose from the Office's failure to deduct premiums for basic life insurance from November 23, 1991 to September 6, 2003. The Office found that appellant was without fault in creating the overpayment, but that waiver of recovery of the overpayment was not warranted because he did not submit information to support that repayment of the debt would result in a financial hardship.

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 and one or more of the options.² The coverage for basic life is effective unless waived³ and premiums for basic and optional life coverages are withheld from the employee's pay.⁴

At separation from the employing establishment, FEGLI will either be terminated or be continued under "compensation" status.⁵ If the compensation chooses to continue

¹ Docket Nos. 02-733 and 02-1529 (issued December 20, 2002).

² 5 C.F.R. Part 870 -- Federal Employees' Group Life Insurance Program.

³ 5 C.F.R. § 870.301(a).

⁴ 5 C.F.R. § 870.401(b).

⁵ 5 C.F.R. § 870.701.

basic and optional life insurance coverage, the schedule of deductions made while the compensationner was an employee will be used to withhold premiums from his or her compensation payments.⁶ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.⁷ FEGLI regulations contain an exception to the rule that compensationners are responsible for premiums for basic life insurance: “There are no withholdings from individuals who retired or began receiving compensation before January 1, 1990 and who elected the 75 percent reduction.”⁸ When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation to appellant because the Office must pay the full premium to the Office of Personnel Management (OPM) upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

In the present case, the Office found that its failure to collect premiums for basic life insurance from November 23, 1991 to September 6, 2003 created an overpayment of compensation in the amount of \$3,112.40. On appeal appellant contends that he was entitled to continue to receive basic life insurance without any cost to him because his injuries occurred before January 1, 1990.

Even though it is consistent with advice that the Office provided appellant in a September 20, 1994 letter, his contention that basic life insurance would continue at no cost to him is incorrect. As quoted above, 5 C.F.R. § 870.401(d)(1) provides that basic life insurance continues¹⁰ with out withholdings from individuals who began receiving compensation before January 1, 1990.¹¹ The date the employee or former employee began receiving compensation, not the date of injury, determines whether that individual can continue to receive basic life insurance without cost to the individual. Although appellant received intermittent periods of compensation before January 1, 1990, he did not qualify as a “compensationner” until November 23, 1991, when he stopped work and was determined by the Office to be unable to return to duty.¹²

⁶ 5 C.F.R. § 872.401.

⁷ *Glen B. Cox*, 42 ECAB 703, 708 (1991).

⁸ 5 C.F.R. § 870.401(d)(1).

⁹ 5 C.F.R. § 870.401(f); *Calvin W. Scott*, 39 ECAB 1031, 1036 (1988).

¹⁰ There is no evidence that appellant was otherwise not eligible to continue basic life insurance and OPM determined on May 12, 1997 that appellant was eligible to continue life insurance as a compensationner.

¹¹ This section of OPM’s regulations contains the additional condition that the 75 percent reduction was elected. The case record does not contain appellant’s election of a post-retirement reduction of life insurance benefits that is mandated by 5 C.F.R. § 870.701(c), but this section provides that OPM considers the individual to have chosen the 75 percent reduction “[i]f there is no valid election....”

¹² 5 C.F.R. § 870.101 defines compensationner as “an employee or former employee who is entitled to compensation and whom the Department of Labor determines is unable to return to duty.”

The Office, thus, properly determined that appellant received an overpayment of compensation because no premiums for basic life insurance were deducted from November 23, 1991 to September 6, 2003. The Office, however, has not provided sufficient information for the Board to determine whether the amount of the overpayment of compensation is correct. The Office's computation of the amount of the overpayment contains a listing of the premiums that should have been collected from appellant for each period from November 23, 1991 to September 6, 2003, but does not show the source of the amounts of the premiums. Without any indication of the source of the amounts of the premiums, the Board is unable to ascertain whether these amounts are correct.

The case record also indicates that appellant used periods of paid leave until August 22, 1992 and that deductions for premiums for basic life insurance were made until that date. Thus, the amount of the overpayment calculated by the Office was incorrect, as it was based on the incorrect premise that no premiums for basic life insurance were paid after November 23, 1991. The case will be remanded for recalculation of the amount of the overpayment and for the inclusion of a reference to the tables or other source which was the basis of the amounts the Office determined should have been collected as premiums for basic life insurance.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Federal Employees' Compensation Act¹³ provides that an overpayment of compensation must be recovered unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter of the [Act] or would be against equity and good conscience." 20 C.F.R. § 10.436 provides:

"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 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. A higher amount is specified for a beneficiary with one or more dependents."

ANALYSIS -- ISSUE 2

As the Board's determination on the first issue requires the Office to issue a new decision on the amount and basis of the overpayment of compensation, the issue of whether

¹³ 5 U.S.C. § 8129.

the overpayment should be waived is not ripe on the present appeal. With the new decision, appellant should be given an opportunity to submit financial information to allow the Office to determine whether recovery of the overpayment of compensation should be waived.

CONCLUSION

Appellant received an overpayment of compensation due to the Office's failure to collect premiums for basic life insurance. The Office, however, must issue a new decision on the amount and source of the overpayment and, with this decision, afford appellant an opportunity to present financial information to allow the Office to determine whether recovery of the overpayment of compensation should be waived.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2003 decision is affirmed with regard to the existence of an overpayment of compensation. The Office's December 2, 2003 decision is set aside with regard to the amount of the overpayment and the case is remanded to the Office for a *de novo* decision on the overpayment of compensation consistent with this decision of the Board.

Issued: May 19, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member