



## **FACTUAL HISTORY**

On July 31, 1988 appellant, then a 38-year-old manpower development specialist, filed a claim alleging that on July 15, 1988 she injured her leg, arm and fingers when an elevator door closed on her.<sup>1</sup> The Office accepted that she sustained a contusion and sprain of the left ring finger, left forearm, left leg and later expanded the claim to include post-traumatic stress disorder. Appellant stopped work on July 15, 1988 and returned to part-time work four hours per day on November 14, 1988. Her pay rate on the date of injury was \$28,640.00 or \$550.76 per week. The record reflects that appellant was enrolled in life insurance Option A Standard, Option B five times salary, and Option C for her family. In a memorandum dated February 1, 1989, the Office noted that appellant would be placed on the periodic rolls for four hours per day and that health benefits and optional life deducted from her compensation benefits. Appellant stopped work completely in April 1989 and was terminated on June 17, 1991 due to her inability to perform the duties of the position.

By letter dated December 28, 2000, appellant inquired as to whether life insurance premiums were deducted from her compensation benefits. In an electronic mail dated January 4, 2001, an Office claims examiner reviewed her compensation payment history and determined that optional life insurance was not deducted from her compensation benefits.

In a letter dated May 23, 2001, the Office notified appellant that information provided by her former employer confirmed that she had elected optional life insurance, the premiums of which had not been deducted from her compensation. Appellant was advised that it would calculate the past premium amounts and determine the overpayment of compensation.

In a June 26, 2001 overpayment worksheet, the Office determined that no deduction had been made for appellant's life insurance premiums including Basic, Option A Standard, Option B five times salary, and Option C for the family for the period April 9, 1989 to May 19, 2001. An overpayment was calculated in the amount of \$4,495.96.

On August 3, 2001 the Office made a preliminary finding that appellant was overpaid benefits in the amount of \$4,495.96. It noted that the overpayment was created because it did not deduct basic and optional life insurance premiums from her compensation benefits for the period April 9, 1989 to May 19, 2001. The Office determined that appellant was without fault in the creation of the overpayment and advised that she had the right to submit, within 30 days, evidence or arguments regarding the overpayment and her eligibility for waiver. Appellant did not respond.

By decision dated October 11, 2001, the Office found that appellant received a \$4,495.93<sup>2</sup> overpayment of compensation from April 9, 1989 to May 19, 2001 for which she was

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<sup>1</sup> Appellant filed a separate claim for compensation for an injury sustained on November 30, 1987 when she fell down steps and injured her left leg, hip, right arm and neck. The Office accepted appellant's claim for cervical and lumbar sprain and trauma to the abdomen and paid appropriate compensation.

<sup>2</sup> The amount of the overpayment is stated as \$4,495.93; however, this appears to be a typographical error. The overpayment worksheet and preliminary overpayment notice indicate the correct amount of \$4,495.96.

without fault. In an accompanying memorandum, it was noted that appellant neither submitted a Form OWCP-20 overpayment questionnaire or other evidence to support waiver of the overpayment. Therefore waiver was denied and the overpayment amount was found due and payable.

On October 24, 2001 appellant requested waiver of the \$4,495.96 overpayment and an oral hearing on the matter. Appellant contended that she notified the Office and the Office of Personnel Management (OPM) on several occasions beginning in May 1999 that deductions for life insurance were not being withheld from her compensation benefits. She advised that recovery of the overpayment would be a severe hardship because she had limited income and the support of her 17-year-old son. Appellant noted that she was being treated for a mental disorder.

On November 5, 2001 appellant submitted an overpayment questionnaire and indicated a total monthly income of \$2,741.00 and monthly expenses of \$2,726.00. She noted that she was a co-owner of a farm and held the interest in trust for her son until he reached the age of 25.

A pre-recoupment hearing was held on February 20, 2002. Appellant testified that she had monthly income of \$2,036.00 in compensation benefits, \$323.00 for Veterans' Administration benefits and child support of \$450.00, for a total monthly income of \$2,809.00. She listed monthly expenses of approximately \$2,861.33. Appellant testified that she was co-owner of a family farm in North Carolina and that her portion was valued at \$50,000.00, and a condominium in Washington, D.C. which was valued at \$15,000.00. She advised that both properties were being held for her son.

By decision dated December 12, 2002, an Office hearing representative found that appellant received a \$4,383.76 overpayment of compensation from April 9, 1989 to May 19, 2001 for which she was without fault in creating. The hearing representative noted that optional life insurance deductions were made beginning December 14, 1988 which varied in amount from .50 to \$1.50 and that, for the period of January 9 to February 13, 1989, \$1.50 was deducted from her compensation benefits. The hearing representative determined that the Office used the incorrect pay rate of \$29,814.00 to calculate the overpayment instead of the date-of-injury pay rate of \$28,640.00 or \$550.76 per week. The hearing representative addressed appellant's argument in support of waiver and found that recovery of the overpayment would not defeat the purpose of the Act<sup>3</sup> or be against equity and good conscience as appellant's assets exceeded her asset base.<sup>4</sup> Therefore, waiver of overpayment was not granted. The hearing representative found that the overpayment should be recovered in full.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> When an overpayment has been made to an individual

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.436.

<sup>5</sup> 5 U.S.C. § 8102(a).

because of an error of fact or law, adjustments shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>6</sup>

Under the Federal Employees' Group Life Insurance Program (FEGLI), most civilian employees of the federal government are eligible to participate in basic life insurance and one or more of the options.<sup>7</sup> The coverage for basic life insurance is effective unless waived<sup>8</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>9</sup> 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 will be used to withhold premiums from his or her compensation payments.<sup>10</sup> 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 OPM upon discovery of the error.<sup>11</sup>

### ANALYSIS -- ISSUE 1

The record indicates that deductions for basic and optional life insurance were not made from appellant's compensation for the period April 9, 1989 to May 19, 2001. Consequently, appellant received an overpayment of compensation benefits paid.

When an underholding 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 OPM upon discovery of the error.<sup>12</sup> The Office properly determined that for the period April 9, 1989 to May 19, 2001 appellant received an overpayment of \$4,383.76. Appellant does not dispute that she received the overpayment nor dispute the amount of the overpayment. The hearing representative explained how the overpayment occurred and used the correct pay rate in determining the overpayment amount, the date-of-injury pay rate for 1988 of \$550.76 per week. The record reflects that appellant did not return to full-time regular duty therefore there was no basis for a payment of compensation at a recurrence pay rate. The Board finds that the Office properly determined the amount of the overpayment that covered the period April 9, 1989 to May 19, 2001.

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<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> 5 U.S.C. § 8702(a).

<sup>8</sup> 5 U.S.C. § 8702(b).

<sup>9</sup> 5 U.S.C. § 8707.

<sup>10</sup> 5 U.S.C. § 8706(b).

<sup>11</sup> 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>12</sup> *Id.*

## LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of the Act provides as follows:

“Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”<sup>13</sup> No waiver of an overpayment is possible if the claimant is at fault in creating the overpayment.<sup>14</sup>

Sections 10.441(a) of Title 20 of the Federal Code of Regulations provides that where an overpayment has been made to an individual by reason of an error of fact or law, such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same. However, section 8129(b) provides “[a]djustment or recovery by the United States may not be made when incorrect payment had 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.”<sup>15</sup>

The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.436 and 10.437 of Title 20 of the Code of Federal Regulations. Section 10.436(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses<sup>16</sup> and if the individual’s nonexempted assets do not exceed a resource base determined by the Office with advice from the Department of Labor’s Bureau of Labor and Statistics.<sup>17</sup> An overpaid individual must meet both of these criteria in order to establish financial hardship. Section 10.436 also provides that recovery of an overpayment is considered to be against equity and good conscience if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.<sup>18</sup>

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<sup>13</sup> 5 U.S.C. § 8129(b).

<sup>14</sup> *Gregg B. Manston*, 45 ECAB 344 (1994).

<sup>15</sup> *Id.* § 8129(b).

<sup>16</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses, *i.e.*, ordinary and necessary living expenses plus \$50.00.

<sup>17</sup> 20 C.F.R. § 10.436(a).

<sup>18</sup> *Id.* § 10.437(b).

The Office procedure manual<sup>19</sup> outlines the specific financial circumstances under which recovery may be considered to “defeat the purpose of the Act” and provides:

(1) [I]f recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of the FECA if both:

(a) The individual from whom recovery is sought needs substantially all of his or her current income (including FECA monthly benefits) to meet current ordinary and necessary living expenses, and

(b) The individual’s assets do not exceed the 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 claimants assets not exempted from recoupment in (iv) below. The first \$3,000.00 or more, depending on the number of the individual’s dependents, is also exempted from recoupment as a necessary emergency resource.

An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00).

Both conditions in (a) and (b) above must be met to defeat the purpose of the FECA. When an individual exceeds the limits for either disposable current income or assets, on the face of it this provides a basis for establishing a reasonable repayment schedule over a reasonable, specified period of time. It is the individual’s burden to show otherwise by submitting evidence that recovery of the overpayment would cause financial hardship of a nature sufficient to justify waiver.”<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

In an October 24, 2001 letter, appellant contended that recovery of the overpayment would be against equity and good conscience and submitted an OWCP-20 form on November 5, 2001 indicating that she had monthly income of \$2,741.00 and monthly expenses of \$2,726.00. At the February 20, 2002 oral hearing, appellant testified that she had monthly income of \$2,809.00 and expenses of approximately \$3,078.33. Although there appears to be conflicting

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<sup>19</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.6(a)(1)(b) (May 2004).

<sup>20</sup> *Id.*

testimony regarding appellant's income and expenses, the record establishes that her current income does not exceed her monthly expenses by more than \$50.00, therefore she is deemed to need substantially all of her income to meet her ordinary and necessary living expenses. However, the evidence of record reveals that appellant's assets exceed the resource base of \$5,000.00. At the hearing appellant testified that she had an interest in a family farm valued at \$50,000.00, and an interest in a condominium valued at \$15,000.00. Appellant has total assets of \$65,000.00. After deducting the resource base of \$5,000.00 for appellant and a dependent child, she has assets of approximately \$60,000.00. Because appellant has assets that exceed the resource base of \$5,000.00 for an individual with one dependent, the Board finds that appellant has failed to demonstrate that recovery of the overpayment would defeat the purposes of the Act.<sup>21</sup> Appellant has not demonstrated that she would experience severe financial hardship in repaying the overpayment of \$4,383.76.

With respect to whether recovery would be against equity and good conscience, section 10.437(a)(b) of the federal regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. Appellant contends that she notified the Office on several occasions after reviewing her compensation benefits statement that deductions for life insurance were not being withheld and she advised that recovery of the overpayment would be a severe hardship because she has limited income and supports her 17-year-old son and was being treated for a mental disorder. The Board finds that recovery of the overpayment would not be against equity and good conscience since there is no evidence of record from which to conclude that appellant relied on her incorrectly calculated compensation payments to relinquish a valuable right or change her position for the worse. Whether to waive recovery of an overpayment of compensation is a matter that rests within the Office's discretion pursuant to statutory guidelines.<sup>22</sup> 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 by denying waiver of recovery.

As appellant has not shown that recovery would "defeat the purpose of the Act" or would "be against equity and good conscience," the Board finds that the Office properly denied waiver of recovery of the overpayment. Thus, appellant does not qualify for waiver by reason of financial hardship. Further, appellant did not argue or submit evidence to establish that recovery of the overpayment would be against equity or good conscience, or that in reliance on the overpaid compensation, she relinquished a valuable right or changed her position for the worse.

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<sup>21</sup> *Supra* note 19.

<sup>22</sup> *Carroll R. Davis*, 46 ECAB 361 (1994).

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.<sup>23</sup> Section 10.441(a) of the regulations<sup>24</sup> provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP 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, OWCP 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 relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.”<sup>25</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under the Act. Appellant provided the requested information on income, expenses and assets, which revealed that appellant has total assets of \$65,000.00 and after deducting the resource base of \$5,000.00 for appellant and her dependent child, she has assets of \$60,000.00. Her assets exceeded the resource base of \$5,000.00. The Office considered her financial information in finding that the overpayment was due and payable in full.

### **CONCLUSION**

The Board finds that appellant received an overpayment of \$4,383.76 in compensation from April 9, 1989 to May 19, 2001. The Board also finds that the Office did not abuse its discretion in denying waiver of the overpayment, and the full amount is due and payable.

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<sup>23</sup> *Lorenzo Rodriguez* 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>24</sup> 20 C.F.R. § 10.441(a).

<sup>25</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member