

**United States Department of Labor
Employees' Compensation Appeals Board**

PHILIP P. LECKLIKNER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 04-219
Issued: November 10, 2004**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 3, 2003 appellant filed a timely appeal from the October 28, 2003 merit decision of the Office of Workers' Compensation Programs, which found an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUES

The issues are: (1) whether appellant received an overpayment of \$3,304.98 in compensation from March 15, 1994 to November 2, 2002; and (2) whether the Office properly denied waiver of recovery.

FACTUAL HISTORY

On January 28, 1994 appellant, then a 51-year-old maintenance mechanic, injured his low back in the performance of duty when he bent over to clear mail sacks jammed on a conveyor belt. The Office accepted his claim for chronic lumbosacral strain superimposed on degenerative disc disease and paid compensation for temporary total disability.

On September 21, 1993 appellant signed a life insurance election form authorizing deductions for basic and optional life insurance. On March 27, 2000 he authorized deductions for postretirement basic life insurance with no reduction in coverage after age 65. Despite these authorizations, the Office deducted premiums only for optional life insurance. Deductions for basic life and postretirement basic life insurance did not begin until November 3, 2002.

On December 16, 2002 the Office made a preliminary finding that appellant received an overpayment of \$3,304.98 in compensation from March 15, 1994 to November 2, 1999 (sic) because no deductions were made for basic life and postretirement basic life insurance. The Office made a preliminary finding that appellant was not at fault in the matter and asked that he complete an overpayment recovery questionnaire and attach financial documentation for his income, expenses and assets:

“This information will help us decide whether or not to waive the overpayment. If waiver is not granted, the information will be used to decide how to collect the overpayment. We will not try to collect the overpayment until we reach a final decision on your request for waiver.

“Also please note that under 20 C.F.R. [§] 10.438, we will deny waiver if you fail to furnish the information requested on the enclosed Form OWCP-20 (or other information we need to address a request for waiver) within 30 days. We will not consider any further request for waiver until the requested information is furnished.”

Appellant requested a review of the written record. He requested waiver on the grounds that he “has relied upon the higher level of income that he has been receiving until the recent determination that he was being overpaid.” He noted that his spouse, who was disabled by a medical condition, was forced to work part-time twice a week to make up for the income the Office was taking away. Also, if he was required to repay the overpayment, he requested a monthly deduction of \$50.00 from continuing compensation.

In a decision dated October 28, 2003, the Office finalized its preliminary findings on the fact and amount of overpayment. The Office found that appellant was without fault but denied waiver of the overpayment because he failed to provide the financial information requested. Because the record contained no information to permit a repayment schedule, the Office found the overpayment due and payable.

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.¹ The coverage for basic life is effective unless waived² and premiums for

¹ 5 U.S.C. § 8702(a).

² 5 U.S.C. § 8702(b).

basic and optional life coverage are withheld from the employee's pay.³ An employee entitled to compensation benefits may continue his or her basic life insurance coverage without cost under certain conditions and may also retain the optional life insurance.⁴ At separation from the employing establishment, FEGLI 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 was an employee will be used to withhold premiums from his or her compensation payments. Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.⁵

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on January 28, 1994 and received compensation for his disability. Although he authorized deductions for basic life and postretirement basic life insurance, the Office deducted no premiums for this coverage until November 2, 2002. This error caused appellant to receive more compensation than that to which he was entitled. The Board will affirm the Office's October 28, 2003 decision on fact of overpayment.

To determine the amount of the overpayment, the Office divided the number of compensation days from March 15, 1994 to April 24, 1999 (1,867) by 28 (to obtain the number of compensation payments for the period) and multiplied that amount by the basic life premium rate of \$10.90. This showed an underdeduction of \$726.80. The Office divided the number of compensation days from April 25, 1999 to November 2, 2002 (1,288) by 28 and multiplied that amount by the basic life premium rate, in effect at that time, of \$10.24. This showed an underdeduction of \$471.04. Finally, the Office took the number of compensation days from March 27, 2000 (the date appellant authorized deductions for postretirement basic life insurance with no reduction) to November 2, 2002 (951) by 28 and multiplied that amount by the postretirement basic life no reduction premium rate of \$62.04. This showed an underdeduction of \$2,107.14. Combined, these underdeductions from appellant's compensation amounted to \$3,304.98. The Board will affirm the Office's October 28, 2003 decision on the amount of the overpayment.

Although the Office's preliminary determination and final overpayment decision identify the period of the overpayment as March 15, 1994 to November 2, 1999, the latter date is erroneous on its face because appellant did not authorize deductions for postretirement basic life insurance until March 27, 2000. As the record shows that deductions for basic life and postretirement basic life insurance did not begin until November 3, 2002, the Board will modify

³ 5 U.S.C. § 8707.

⁴ 5 U.S.C. § 8706 (b).

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

the Office's October 28, 2003, decision to reflect that the overpayment occurred from March 15, 1994 to November 2, 2002.⁶

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁷ If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless (1) adjustment or recovery of the overpayment would defeat the purpose of the Federal Employees' Compensation Act; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁸

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.⁹ Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.¹⁰ Recovery of an overpayment is also considered to be against equity and good conscience when any 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.¹¹

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.¹² Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹³

⁶ The number of compensation days used to determine the amount of the overpayment also supports that the overpayment continued to November 2, 2002.

⁷ 20 C.F.R. § 10.433(a) (1999).

⁸ *Id.* at § 10.434.

⁹ *Id.* at § 10.436.

¹⁰ *Id.* at § 10.437(a).

¹¹ *Id.* at § 10.437(b).

¹² *Id.* at § 10.438(a).

¹³ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

The overpayment recovery questionnaire, Form OWCP-20, is designed to obtain the financial information necessary to determine whether the overpaid individual is eligible for waiver.¹⁴ In its December 16, 2002 preliminary determination, the Office provided appellant with an overpayment recovery questionnaire and requested that he furnish the financial information requested therein, with documentation, within 30 days. The Office duly notified appellant of the consequences for failing to do so. Although the Office found appellant without fault in the creation of the overpayment, he is still responsible for providing information about income, expenses and assets as specified by the Office. Because he failed to submit the financial information requested and because he has not established that he gave up a valuable right or changed his position for the worse in reliance on the overpayment, the Board will affirm the Office's October 28, 2003 denial of waiver.¹⁵

CONCLUSION

The Board finds that appellant received an overpayment of \$3,304.98 in compensation from March 15, 1994 to November 2, 2002. The Board also finds that the Office properly denied waiver on the grounds that appellant failed to submit the financial information necessary to determine his eligibility for waiver and to set up a repayment schedule.

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.6.a(4) (September 1994).

¹⁵ On October 28, 2003 the Office found that the overpayment was due and payable but did not decide the rate of recovery. The Board has noted that when, as in this case an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly. *Gail M. Roe*, 47 ECAB 268 (1995); *see* FECA Bulletin No. 87-19 (issued February 3, 1987) (setting the minimum acceptable offset against continuing benefits at 10 percent of each scheduled payment and in no case less than 10 percent of the augmented compensation rate for temporary total disability of a GS-2, Step 1, employee).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member