

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

LYNN SCANTLING, Appellant	)	
	)	
and	)	<b>Docket No. 04-505</b>
	)	<b>Issued: November 26, 2004</b>
<b>DEPARTMENT OF AGRICULTURE, FOOD SAFETY &amp; INSPECTION SERVICE, Waldron, AR, Employer</b>	)	
	)	

*Appearances:*  
Lynn Scantling, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On December 9, 2003 appellant filed an appeal from a decision of the Office of Workers' Compensation Programs dated October 15, 2003 finding that she had received an overpayment of compensation and denying waiver of the overpayment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issues of this case.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$498.90 because the Office failed to deduct premiums for basic life insurance for the period November 3, 1999 through August 9, 2003; and (2) whether the Office properly denied waiver of recovery of the overpayment.

**FACTUAL HISTORY**

On September 29, 1999 appellant, then a 43-year-old poultry inspector, filed an occupational disease claim alleging that she sustained right lateral epicondylitis and right carpal tunnel syndrome due to factors of her federal employment. She stopped work on

September 14, 1999. The Office accepted appellant's claim for lateral epicondylitis of the right elbow.

Appellant filed a claim for compensation beginning November 3, 1999. On the reverse side of the claim form, her supervisor indicated that she had basic and optional life insurance. The Office paid appellant compensation beginning November 3, 1999 but did not include deductions for basic life insurance premiums. By letter dated December 20, 1999, the Office informed appellant that she would receive disability compensation on the periodic rolls effective December 5, 1999 with deductions for optional life insurance and health benefits. The Office did not include deductions for basic life insurance premiums in calculating her monthly compensation on the periodic rolls.<sup>1</sup>

The Office of Personnel Management (OPM) approved appellant's application for disability retirement. Appellant elected to continue to receive life insurance with a 75 percent reduction, or minimum coverage, after age 65.

In a worksheet dated August 15, 2003, the Office determined that appellant received an overpayment of \$498.90 because it had not deducted premiums for basic life insurance for the period November 3, 1999 through August 9, 2003. The Office calculated the overpayment by multiplying the basic life insurance premiums owed by appellant from November 3, 1999 through August 9, 2003 by the number of pay periods. The Office then added the amounts together to find a total overpayment of \$498.90. The Office obtained the information regarding basic life insurance premium from a basic life and post-retirement basic life insurance worksheet.

Appellant elected retirement benefits from OPM effective August 25, 2003.

On September 10, 2003 the Office informed appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$498.90 because it failed to deduct premiums for basic life insurance from November 3, 1999 through August 9, 2003. The Office further notified appellant of its preliminary determination that she was not at fault in the creation of the overpayment. The Office informed appellant that she should complete the enclosed overpayment recovery questionnaire and submit financial documents to support waiver of the overpayment. Additionally, the Office notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence or a preresoupment hearing.

Appellant did not submit the overpayment recovery questionnaire or financial information.

By decision dated October 15, 2003, the Office finalized its determination that appellant received an overpayment in the amount of \$498.90 because it failed to deduct premiums for basic life insurance for the period November 3, 1999 through August 9, 2003. The Office found that appellant was without fault in creating the overpayment and that she was not entitled to

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<sup>1</sup> Computer printouts support that the Office did not deduct basic life insurance premiums from appellant's compensation.

waiver. The Office requested that appellant submit a check for \$498.90 to repay the overpayment.

### **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 his duty.<sup>2</sup> When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>3</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>4</sup> The coverage for basic life insurance is effective unless waived<sup>5</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</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>7</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>8</sup>

### **ANALYSIS -- ISSUE 1**

The record shows that appellant was enrolled in basic life insurance while in receipt of compensation benefits. The record further reveals that the Office failed to deduct premiums for basic life insurance from appellant's compensation during the period November 3, 1999 through August 9, 2003. The Board, therefore, finds that the Office properly determined that this underdeduction constituted an overpayment of compensation.<sup>9</sup>

The Office calculated the amount of the overpayment by multiplying appellant's adjusted salary by the premium rates per thousand for basic life insurance and then doubling this amount to find the applicable premium per pay period. The Office multiplied the premiums by the

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8129(a).

<sup>4</sup> 5 U.S.C. § 8702(a).

<sup>5</sup> 5 U.S.C. § 8702(b).

<sup>6</sup> 5 U.S.C. § 8707.

<sup>7</sup> 5 U.S.C. § 8706(b).

<sup>8</sup> 5 U.S.C. § 8707(d); see *Keith H. Mapes*, 56 ECAB \_\_\_\_ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>9</sup> See *Jacob Adams*, 40 ECAB 870 (1989).

number of pay periods for the periods November 3, 1999 through January 25, 2003 and January 26 through August 9, 2003. For the period November 3, 1999 through January 25, 2003, the Office multiplied the premium each compensation period of \$10.23 by the number of pay periods, 42, for a total of \$429.66. For the period January 26 to August 9, 2003, the Office then multiplied the applicable premium of \$9.90 by 7, the number of pay periods during the period, for a total of \$69.30. The Office then added these amounts to find a total overpayment of \$498.90. Appellant does not dispute the amount of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, the first test under section 8129(b), as specified in section 10.436, provides:

“(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.”<sup>10</sup>

Section 10.437 of the regulations covers the equity and good conscience standard and provides:

“(a) Recovery of an overpayment is considered against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

“(b) 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. In making such a decision, [the Office] does not consider the individual’s current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual’s position has changed for the worst, it must be shown that the decision made would not otherwise have been

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<sup>10</sup> 20 C.F.R. § 10.436.

made but for the receipt of benefits and that this decision resulted in a loss.”<sup>11</sup>

The fact that a claimant was without fault in creating the overpayment does not necessarily preclude the Office from recovering all or part of the overpayment; the Office must exercise its discretion in determining whether waiver is warranted under either of these two standards.<sup>12</sup> The waiver of or refusal to waive an overpayment of compensation by the Office rests within its discretion pursuant to statutory guidelines.<sup>13</sup>

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

The Office, in its preliminary notification to appellant of the existence of the overpayment, informed her that she needed to explain her reasons for seeking a waiver, complete the recovery questionnaire form and submit financial documents to support her claimed income and expenses. The Form OWCP-20 overpayment recovery questionnaire is designed to obtain the financial information to determine whether adjustment or recovery would defeat the purpose of the Act. Appellant did not return the overpayment recovery questionnaire provided by the Office and did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Neither did she submit evidence to establish that recovery of the overpayment would be against equity and good conscience because, in reliance on the overpaid compensation, she relinquished a valuable right or changed her position for the worse. Although appellant is without fault in the creation of the overpayment, she nevertheless bears responsibility for providing the financial information necessary to support her request to waive recovery of the overpayment. Section 10.438 of the regulations states that a claimant who received an overpayment is responsible for providing information about income, expenses and assets to the Office so that it may determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>14</sup> Failure to submit the information, which will also be used to determine a repayment schedule if necessary, within 30 days of a request from the Office will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver will be considered until the information is submitted.<sup>15</sup>

As appellant submitted no evidence in this case to establish 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 refusing to waive recovery of the overpayment.

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<sup>11</sup> 20 C.F.R. § 10.437.

<sup>12</sup> *Linda Hilton*, 52 ECAB 476 (2001).

<sup>13</sup> *Rudolph A. Geci*, 51 ECAB 423 (2000).

<sup>14</sup> 20 C.F.R. § 10.438(a).

<sup>15</sup> 20 C.F.R. § 10.438(b); *Robert B. Hutchins*, 52 ECAB 344 (2001).

On appeal appellant contends that she is unable to repay the overpayment due to her financial situation. As discussed above, she did not submit information regarding her income, expenses and assets as requested by the Office and required by regulation.<sup>16</sup> The Office thus appropriately denied waiver of the overpayment.

The Board notes that it does not have jurisdiction to review the Office's recovery of the overpayment. Appellant elected retirement benefits from OPM effective August 25, 2003 and thus was no longer in receipt of compensation payments at the time of the overpayment decision. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$498.90 because the Office failed to deduct premiums for basic life insurance for the period November 3, 1999 through August 9, 2003. The Board further finds that the Office properly denied waiver of recovery of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 15, 2003 is affirmed.

Issued: November 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>16</sup> 20 C.F.R. § 10.438(b).

<sup>17</sup> *Judith A. Cariddo*, 55 ECAB \_\_\_\_ (Docket No. 03-2270, issued February 24, 2004).