

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

EUSEBIO REYNA, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX, Employer**

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**Docket No. 04-596
Issued: November 2, 2004**

Appearances:
Eusebio Reyna, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated December 8, 2003, finding that he was without fault in the creation of an overpayment in the amount of \$1,293.11. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the overpayment issues in this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,293.11 because the Office failed to deduct premiums for basic life insurance for the period August 28, 1993 through July 12, 2003; and (2) whether the Office properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 13, 1993 appellant, then a 50-year-old ground power mechanic, filed a claim for an injury occurring on that date in the performance of duty. He stopped work on July 13, 1993

and did not return. The Office accepted appellant's claim for lumbosacral strain.¹ The Office also accepted that appellant sustained depression and an adjustment reaction due to his July 13, 1993 employment injury.

The Office issued appellant compensation for total disability beginning August 28, 1993. A computer printout indicates that the Office did not deduct premiums for basic life insurance.

On October 12, 1993 the Office informed appellant that he would receive compensation for wage-loss disability beginning September 25, 1993 with deductions for optional life insurance and health benefits. The Office's letter did not indicate that it deducted premiums for basic life insurance.² On June 24, 1994 the Office notified appellant that it was placing him on the periodic rolls effective April 4, 1994 and that it was deducting health benefits and optional life insurance from his compensation.

Appellant retired from the employing establishment effective March 18, 1995. He elected to receive workers' compensation benefits. The employing establishment indicated that appellant had basic life insurance with additional options.

In a worksheet dated November 3, 2003, the Office calculated that appellant received an overpayment of \$1,293.11 because it had not deducted premiums for basic life insurance for the period August 28, 1993 to July 12, 2003.

On November 4, 2003 the Office informed appellant of a preliminary determination that he had received an overpayment of compensation in the amount of \$1,293.11 because it failed to deduct premiums for basic life insurance from August 28, 1993 through July 12, 2003. The Office found that he was not at fault in the creation of the overpayment. The Office informed appellant that he should complete the enclosed overpayment recovery questionnaire and submit supporting financial documents to support any request for waiver of the overpayment.

In a letter dated November 20, 1993, appellant requested waiver of the overpayment and argued that the Office caused the overpayment through its own error. He noted that the Office could not collect an overpayment from an individual who was not at fault if it would defeat the purpose of the Federal Employees' Compensation Act or be within equity and good conscience. Appellant did not submit the overpayment recovery questionnaire or financial information.

By decision dated December 8, 2003, the Office finalized its determination that appellant received an overpayment in the amount of \$1,293.11 because it did not deduct premiums for basic life insurance for the period August 28, 1993 through July 12, 2003. The Office found that appellant was without fault in creating the overpayment and that he was not entitled to waiver. The Office requested that appellant repay the overpayment in full or contact it to make arrangement for recovering by installment.

¹ In a decision dated September 8, 1993, the Office denied appellant's claim on the grounds that he did not establish fact of injury. On September 21, 1993 the Office informed appellant that it had reversed its September 8, 1993 decision.

² Computer printouts support that the Office did not deduct basic life premiums from appellant's compensation.

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.³ The coverage for basic life is effective unless waived,⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.⁵ 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.⁶ 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 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.⁷

ANALYSIS -- ISSUE 1

The record shows that appellant was enrolled in basic life insurance while in receipt of compensation benefits. The Office failed to deduct premiums for basic life insurance from appellant's compensation during the period August 28, 1993 through July 12, 2003. The Board, therefore, finds that the Office properly determined that this underdeduction constituted an overpayment of compensation.⁸ The Office calculated the amount of the overpayment by multiplying appellant's adjusted salary by the premium rates per thousand for basic life insurance to find the applicable premium. The Office multiplied the premiums per compensation period by the number of pay periods for the periods August 28, 1993 to April 24, 1999, April 25, 1999 to January 25, 2003 and January 26 to July 12, 2003. For the period August 18, 1993 to April 24, 1999, the Office multiplied the premium for each compensation period of \$9.57 by the number of pay periods, 80, for a total of \$765.60. For the period April 25, 1999 to January 25, 2003, the Office multiplied the applicable premium of \$8.99 by 49, the number of pay periods, for a total of \$440.51. For the period January 26 to July 12, 2003, the Office multiplied the applicable premium of \$8.70 by the 10 pay periods to find a total of \$87.00. The Office added these amounts owed to find a total overpayment of \$1,293.11. Appellant does not dispute the amount of overpayment.

³ 5 U.S.C. § 8702(a).

⁴ 5 U.S.C. § 8702(b).

⁵ 5 U.S.C. § 8707.

⁶ 5 U.S.C. § 8706 (b).

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

⁸ *See Jacob Adams*, 40 ECAB 870 (1989).

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.”⁹

Section 10.437 of the regulation 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 made, but for the receipt of benefits and that this decision resulted in a loss.”¹⁰

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

⁹ 20 C.F.R. § 10.436.

¹⁰ 20 C.F.R. § 10.437.

standards.¹¹ The waiver of or refusal to waive an overpayment of compensation by the Office rests within its discretion pursuant to statutory guidelines.¹²

ANALYSIS -- ISSUE 2

The Office advised appellant of the existence of the overpayment, that he was without fault and informed him that he needed to explain his reasons for seeking a waiver, complete a recovery questionnaire form and submit financial documents to support his 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 he submit evidence to establish that recovery of the overpayment would be against equity and good conscience because, in reliance on the overpaid compensation, he relinquished a valuable right or changed his position for the worse. Although appellant is without fault in the creation of the overpayment, he nevertheless bears the responsibility for providing the financial information necessary to support his request to waive recovery of the overpayment. Section 10.438 of the Office's regulation 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.¹³ Failure to submit the information, which will also be used to determine a repayment schedule if necessary, without 30 days of a request from the Office shall result in a denial of a waiver of recovery of the overpayment and no further requests for waiver shall be considered until the information is submitted.¹⁴

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.

Appellant argued that he should not have to repay the overpayment because a mistake by the Office caused the overpayment. However, section 10.435(a) provides that an error by a government agency, including the Office, which resulted in an overpayment does not by itself relieve a claimant from liability for repayment.¹⁵

¹¹ *Linda Hilton*, 52 ECAB 476 (2001).

¹² *Rudolph A. Geci*, 51 ECAB 423 (2000).

¹³ 20 C.F.R. § 10.438(a).

¹⁴ 20 C.F.R. § 10.438(b); *Linda Hilton*, *supra* note 11.

¹⁵ 20 C.F.R. § 10.435(a).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,293.11 because the Office failed to deduct premiums for basic life insurance for the period August 28, 1993 through July 12, 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 December 8, 2003 is affirmed.

Issued: November 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member