



## **FACTUAL HISTORY**

The Office accepted that on September 25, 1990 appellant, a 32-year-old mail handler, sustained a shoulder injury in the performance of duty. Appellant returned to full duty on October 17, 1990. Appellant filed a notice of recurrence of disability alleging on January 9, 1991 he sustained a recurrence of his employment-related condition. He stopped work on March 9, 1991. The Office accepted appellant's claim for right shoulder bursitis on March 15, 1991 and authorized compensation benefits from March 9 through June 1, 1991. The Office expanded appellant's claim to include C6-7 disc protrusion and C5-6 and C6-7 discectomy and fusion. The Office entered appellant on the periodic rolls on June 11, 1991. The record establishes that the Office did not deduct basic life insurance premiums from April 24, 1991 through February 8, 1992; September 18 through October 14, 1994; November 13 through December 10, 1994; January 10 through April 1, 1995; and June 25 to July 5, 1995, while appellant was receiving compensation benefits for temporary total disability.

Appellant returned to light-duty work four hours a day on July 6, 1995 and the Office reduced appellant's compensation benefits to reflect his actual earnings on that date. On April 4, 1997 appellant accepted a full-time light-duty position at the employing establishment. During the periods that appellant was working either part or full time, the record supports that the Office paid compensation benefits and failed to deduct basic life insurance from: July 23 through August 19, 1995; and December 10, 1995 through September 4, 1999. The date immediately preceding his accepted recurrence of total disability.

Appellant stopped work on September 3, 1999 and the Office accepted that he sustained a recurrence of disability effective September 5, 1999. The Office authorized compensation benefits for total disability through December 4, 1999. Following appellant's recurrence of total disability, the record supports that the Office paid compensation benefits and failed to deduct basic life insurance from September 4, 1999 through March 25, 2000.

Appellant filed a notice of recurrence of disability on January 23, 2001 alleging that his right shoulder condition prevented a return to work. The Office authorized compensation benefits and failed to deduct basic life insurance from March 25 through April 21, 2001; and February 24 through March 23, 2002.

The Office issued a preliminary finding of overpayment on November 4, 2003 finding that appellant had received an overpayment of compensation in the amount of \$2,028.82 as the Office failed to deduct basic life insurance premiums from appellant's compensation benefits for the entire period from April 24, 1991 through July 12, 2003. 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 found that appellant was not at fault in the creation of the overpayment and requested additional financial information from appellant to consider waiver of the overpayment.

Appellant did not respond and by decision dated December 8, 2003, the Office finalized the fact and amount of overpayment. The Office determined that the overpayment was not

subject to waiver.<sup>1</sup> The Office stated, “The claimant may repay the overpayment at any time by mailing a check in the amount of \$2,028.82....” The Office further stated:

“You should forward a check in the amount of \$2,028.82.... Payment is due within 30 days from the date of this letter. If you are unable to refund the entire overpayment immediately, please contact this office within 30 days so that appropriate arrangements for recovery (such as installment payments) can be made.”

### **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act provide 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 regulation 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 (FEGLI) Program, 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 will either terminate or be continued under “compensationeer” status. If the compensationeer 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 the Office of Personal Management (OPM) upon discovery of the error.<sup>8</sup>

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<sup>1</sup> On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<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).

## ANALYSIS

The Board finds that there is no evidence in the record that appellant waived his basic life insurance and therefore 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 for total disability beginning April 24, 1991. The record contains evidence substantiating only intermittent periods of compensation as actually paid by the Office and the failure of the Office to deduct basic life insurance premiums during those periods including: April 24, 1991 through February 8, 1992; September 18 through October 14, 1994; November 13 through December 10, 1994; January 10 through April 1, 1995; June 25 through July 5, 1995; July 23 through August 19, 1995; December 10, 1995 through March 25, 2000; March 25 through April 21, 2001; and February 24 through March 23, 2002.

As the record includes evidence establishing that appellant received compensation for total disability and that the Office failed to make the appropriate deductions for basic life insurance only during the above listed periods, the Board finds that the Office has met its burden of proof in establishing overpayments of compensation only during the specific periods listed above. As the Office's finding of the amount of overpayment, \$2,028.82, was based on the entire period from April 24, 1991 through July 12, 2003, on remand the Office must recalculate the amount of the total overpayment to correlate with the specific periods of total disability compensation and the corresponding under withholding of basis life insurance premiums substantiated by the record.

The record further establishes that there were intermittent periods within the April 24, 1991 through July 12, 2003 time frame of the overpayment found by the Office during which appellant worked. Section 870.401(b)(1) of OPM's regulations provides: "During each pay period in which an insured is in pay status for any part of the period, the employee's share of the premium must be withheld from the employee's biweekly pay."<sup>9</sup> Appellant returned to limited-duty work on July 6, 1995 and worked in some capacity through September 3, 1999. The Office included the periods that appellant worked within the time frame of the overpayment as delineated in its December 8, 2003 decision. The Office's December 8, 2003 decision did not mention any period of partial disability nor did it describe the responsibility of the employing establishment to make deductions of basic life insurance premiums from appellant's pay. The Office's decision did not address the issue of why the Office, rather than the employing establishment, was responsible for making the deduction of appellant's basic life insurance premiums while he was working part time. The Office is obligated to provide a decision that adequately explains the basis for the decision.<sup>10</sup> As the Office's decision did not address the issue of its responsibility for making deductions for basic life insurance premiums while appellant worked, it has failed to explain the basis for its decision regarding an overpayment of compensation in any period during which appellant worked.

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.

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<sup>9</sup> 5 C.F.R. § 870.401(b)(1).

<sup>10</sup> *Jacqueline Brasch (Ronald Brasch)* 52 ECAB 252, 254 (2001).

As the Office did not properly support and determine the period of the overpayment, the Office could not accurately calculate the amount of the overpayment and the case must be remanded for detailed calculation of the amount of the overpayment.

**CONCLUSION**

The Board finds that there was an overpayment of compensation in this case because the Office failed to deduct premiums for basic life insurance for intermittent periods between April 24, 1991 and March 23, 2002, during which appellant was not working. However, the Board finds that the Office did not properly substantiate and calculate the amount of overpayment resulting from appellant's periods of total disability. Therefore, the case must be remanded for an accurate calculation of the overpayment arising during appellant's periods of total disability in accordance with this decision. The Board further finds that the Office's December 8, 2003 decision did not accurately provide a basis for including within the amount of the overpayment appellant's basic life insurance premiums while he was working part time and consequentially receiving pay from the employing establishment. Thus, the Board finds that the portion of the Office's decision regarding any overpayment allegedly arising while appellant was working is reversed.<sup>11</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed in part, reversed in part and remanded for additional actions consistent with this decision of the Board.

Issued: November 16, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> Due to the Board disposition of the initial issue, it is not necessary to address the remaining issues on appeal.