

She stopped work that day. The Office accepted appellant's claim for cervical and lumbar sprains, bilateral shoulder sprains and internal derangement of both knees. Additionally, she underwent several surgical procedures, which the Office authorized. Appellant received 45 days of continuation of pay and was placed on the periodic rolls effective March 20, 2000.

The Office reviewed the payment history of appellant's case on October 17, 2003 and noticed that while premiums were deducted for optional life insurance coverage dating back to March 20, 2000, it had neglected to deduct basic life insurance premiums. On October 28, 2003 the Office advised appellant that her compensation had been adjusted effective October 5, 2003 to account for basic life insurance premiums totaling \$12.60 every four weeks.

By letter dated February 13, 2004, the Office notified appellant of its preliminary determination that she received an overpayment of benefits in the amount of \$601.65. The Office explained that the overpayment resulted because no deductions for basic life insurance premiums were made from March 20, 2000 through October 4, 2003. The Office advised appellant that she was not at fault in creating the overpayment. Although apprised of her recoupment rights, including requesting waiver of recovery of the overpayment and submitting financial documentation, appellant did not respond to the preliminary overpayment determination.

By decision dated March 31, 2004, the Office finalized its preliminary determination of an overpayment in the amount of \$601.56. The Office further found that waiver of recovery of the overpayment was not warranted and that \$202.16 would be withheld every four weeks from appellant's continuing compensation until the overpayment was repaid in full.

LEGAL PRECEDENT -- ISSUE 1

When Federal Employees' Group Life Insurance premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because upon discovery of the error the Office must pay the full premium to the Office of Personnel Management.¹

ANALYSIS -- ISSUE 1

The record indicates that the Office neglected to deduct basic life insurance premiums during the period March 20, 2000 through October 4, 2003. When this oversight was discovered, the Office promptly notified appellant of the situation and proceeded to deduct the appropriate premiums beginning October 5, 2003. The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$601.65, for the period March 20, 2000 through October 4, 2003. The Office calculated appellant's basic life insurance premium based on an annual salary of \$39,513.00. For the five-day period of March 20 to 25, 2000, the Office calculated an outstanding premium of \$6.51. For the period of March 26, 2000 to January 25, 2003, the Office found that the four-week basic life insurance premium was \$13.02. This premium when multiplied by the number of four-week pay periods (37) between March 26, 2000 and January 25, 2003 equaled an outstanding premium of \$481.74.

¹ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997). See also 5 C.F.R. § 872.401(n).

The final period of January 26 to October 4, 2003 encompassed 9 four-week pay periods. The applicable four-week basic life insurance premium for that timeframe was \$12.60, which, when multiplied by nine pay periods equaled an outstanding premium of \$113.40. The combined outstanding basic life insurance premium for the period March 20, 2000 through October 4, 2003 totaled \$601.65.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Federal Employees' Compensation Act and the implementing regulation, an overpayment must be recovered unless incorrect payment has 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.² Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.³ However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.⁴ The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁵

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 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 the beneficiary's assets do not exceed a specified amount as determined by the Office.⁶ Additionally, 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 or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.⁷

Section 10.438 of the regulation provides that "the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]."⁸ As the regulation indicates, this information is necessary to determine whether or not recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.⁹ Appellant's financial information is also used to determine

² 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437 (1999).

³ 20 C.F.R. § 10.433(a) (1999).

⁴ *Jorge O. Diaz*, 51 ECAB 124 (1999).

⁵ 20 C.F.R. § 10.434 (1999).

⁶ 20 C.F.R. § 10.436 (1999).

⁷ 20 C.F.R. § 10.437 (1999).

⁸ 20 C.F.R. § 10.438(a) (1999).

⁹ *Id.*

any necessary repayment schedule.¹⁰ The regulation further specifies that “failure to submit the requested information ... shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”¹¹

ANALYSIS -- ISSUE 2

Appellant did not request a waiver of recovery of the overpayment nor did she submit any financial information in support of a waiver. On appeal she argues that she should not be held accountable for another person’s mistake in failing to deduct the appropriate amount of life insurance premiums. Appellant also stated that the \$202.16 monthly reduction of compensation to repay the overpayment would represent a financial hardship.

The fact that appellant was not at fault in the creation of the overpayment does not, of itself, establish a basis for waiver of recover of the overpayment.¹² Furthermore, absent specific documentation of assets, liabilities and monthly income and expenses, appellant’s assertion that repayment of the overpayment would result in financial hardship does not justify waiver. The applicable regulation clearly specifies that appellant is responsible for submitting information about income, expenses and assets and that a “failure to submit the requested information ... shall result in denial of waiver.”¹³

The record does not establish that recovery of the overpayment will defeat the purpose of the Act. Additionally, appellant has not alleged, nor does the record establish that she relinquished a valuable right or changed her position for the worse in reliance on the excess compensation she received. Accordingly, she failed to establish that recovery of the overpayment would be against equity and good conscience.¹⁴ The Board finds that the Office properly denied waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of the regulation authorizes the Office to recover an overpayment by decreasing later payments of compensation.¹⁵ In exercising its authority under section 10.441(a), the Office must take 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.”¹⁶

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.438(b) (1999).

¹² *Jorge O. Diaz*, 51 ECAB 124 (1999). The fact that the Office may have been negligent in not deducting the insurance premiums does not preclude recovery. *See Lorenzo Rodriquez*, 51 ECAB 295 (2000).

¹³ 20 C.F.R. § 10.438(b) (1999).

¹⁴ 20 C.F.R. § 10.437 (1999).

¹⁵ 20 C.F.R. § 10.441(a) (1999).

¹⁶ *Id.*

ANALYSIS -- ISSUE 3

With respect to the Office's decision to deduct \$202.16 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is in accordance with 20 C.F.R. § 10.441(a). The Office noted that appellant received compensation in the amount of \$2,021.60 every four weeks. The repayment schedule imposed by the Office amounts to 10 percent of appellant's monthly compensation benefits. Based on this repayment schedule the entire debt will be resolved in approximately three months. Given the lack of financial information available, the Board finds that the Office reasonably imposed a repayment schedule of \$202.16 every four weeks.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$601.65. The Board further finds that the Office properly denied waiver of recovery of the overpayment and properly required repayment of the overpayment by deducting \$202.16 every four weeks from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member