

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

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**EDDIE PEETE, Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Richmond, VA, Employer**

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**Docket No. 04-1704  
Issued: December 9, 2005**

*Appearances:*  
*Eddie Peete, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 25, 2004 appellant filed a timely appeal of the May 12, 2004 merit decision of the Office of Workers' Compensation Programs, which found that he received an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant received an overpayment of \$737.11 from November 24, 2003 to February 21, 2004 and from May 18 to July 21, 2003; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$103.00 from continuing compensation payments.

**FACTUAL HISTORY**

On March 7, 2002 appellant, then a 39-year-old tax resolution representative, injured his back when he sat in a chair which collapsed. The Office accepted that appellant sustained a

lumbar strain and a herniated disc and paid appropriate compensation benefits. Appellant stopped work on March 20, 2002 and returned on March 21, 2002. On December 13, 2002 appellant stopped work and on December 17, 2002 he underwent a lumbar decompressive laminectomy. He returned to work on April 21, 2003 and worked two hours per day and began working full time on July 7, 2003.<sup>1</sup>

In a fiscal payment worksheet dated March 19, 2004, the Office indicated that from May 18 to July 21, 2003 the incorrect amount of health insurance benefits were collected under the Federal Employees Health Benefits (FEHB) Program. The Office noted that it collected code ZG2 for health insurance instead of the correct code of UR2. Additionally, the Office advised that for the period November 24, 2003 to February 21, 2004 no health benefits were collected. The Office also noted that for the period November 24, 2003 to February 21, 2004 no basic or optional life insurance premiums were deducted, this amounted to an overpayment of \$57.24 which was included in the total overpayment determination of \$737.11. The total overpayment of compensation was \$737.11.

In a preliminary overpayment determination dated April 7, 2004, the Office advised appellant that he had received a \$737.11 overpayment because health insurance premiums were deducted under code ZG2 instead of code UR2 for the period May 18 to July 21, 2003. Additionally, the Office noted that health insurance premiums were not deducted for the period November 24, 2003 to February 21, 2004. The Office made a preliminary finding that appellant was without fault in creating the overpayment. The Office informed appellant that, if he wanted waiver of the overpayment, he should complete a financial recovery questionnaire form and submit documents such as income tax returns, bank statements, bills, canceled checks, pay slips and other records to support his claimed income and expenses. The Office did not reference the basic and optional life insurance overpayment set forth in the overpayment worksheet.

On April 27, 2004 appellant requested waiver of the overpayment and submitted the overpayment questionnaire and supporting documents. The Office conducted a telephone conference with appellant and gathered additional financial information. Appellant listed monthly income of \$3,222.43 and monthly expenses of \$1,856.93. Appellant stated that he informed the Office and the employing establishment several times that health insurance premiums were not being deducted from his compensation; however, he was assured that the premium deductions were collected.

By decision dated May 12, 2004, the Office found that appellant received an overpayment of compensation in the amount of \$737.11 that occurred because health insurance premiums were deducted under the incorrect code ZG2 instead of code UR2 for the period May 18 to July 21, 2003 and health insurance premiums were not deducted for the period November 24, 2003 to February 21, 2004. The Office found that he was without fault in the creation of the overpayment, but that waiver of recovery of the overpayment was not warranted. The Office specifically advised that collection would not be against equity and good conscience or cause a financial hardship. The Office found that the sum of \$103.00 would be withheld from

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<sup>1</sup> The record reveals that, on January 13, 2004, the Office issued a loss of wage-earning capacity decision; however, the Board notes that appellant did not appeal this Office decision.

his continuing compensation effective June 12, 2004. The Office did not reference the basic and optional life insurance overpayment set forth in the overpayment worksheet.

**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>

The regulations of the Office of Personnel Management (OPM), which administers the FEHB Program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee [or annuitant’s] share of the cost of enrollment for every pay period during which the enrollment continues. An employee [or annuitant] incurs an indebtedness due the United States in the amount of the proper employee [or annuitant] withholding required for [each] pay period” that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.”<sup>4</sup>

In addition, 5 C.F.R. § 890.502(c) provides:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of title 5 United States Code, to OPM for deposit in the Employees Health Benefits Fund.”<sup>5</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>6</sup> The coverage for basic life insurance is effective unless waived<sup>7</sup> and the premiums for basic and optional life coverage are withheld from the employee’s pay.<sup>8</sup> At

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8129(a).

<sup>4</sup> *See* 5 C.F.R. § 890.502(a)(1).

<sup>5</sup> *See* 5 C.F.R. § 890.502(c).

<sup>6</sup> 5 U.S.C. § 8702(a).

<sup>7</sup> 5 U.S.C. § 8702(b).

<sup>8</sup> 5 U.S.C. § 8707.

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>9</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>10</sup>

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

In this case, health insurance premiums were deducted under the incorrect code ZG2 instead of code UR2 for the period May 18 to July 21, 2003 and were not deducted for the period November 24, 2003 to February 21, 2004. The Office calculated that health benefits should have been deducted from appellant’s compensation during the above periods. As no health benefit deductions were made from his compensation during that time period and there is no evidence that appellant cancelled his health benefits enrollment, the Board finds that an overpayment was created.

In this case, the Board cannot determine how the Office arrived at the amount of the overpayment. The Office determined in a preliminary finding dated February 10, 2004 and a final decision dated March 19, 2004 that there was an overpayment of compensation in the amount of \$737.11 for the period May 18 to July 21, 2003 and November 24, 2003 to February 21, 2004 due to a failure to properly deduct health insurance benefits. However, the figures as set forth on the overpayment worksheet amount to \$645.55 and it is unclear from the record how the Office determined the overpayment was \$737.11. The Board has carefully reviewed the evidence of record and cannot find an explanation of how such overpayment was determined.

Furthermore, the Office also noted in the overpayment worksheet that for the period November 24, 2003 to February 21, 2004 no basic or optional life insurance premiums were deducted, this amounted to an overpayment of \$57.24 which was included in the total overpayment determination of \$737.11. The Board has reviewed the record and cannot find any documents substantiating the life insurance overpayment or any explanation of how such overpayment was determined. This is especially important because neither the preliminary notice nor the final overpayment decisions referenced a failure to deduct life insurance premiums as the cause of the overpayment. As the evidence of record is insufficient to allow the Board to determine whether the Office properly calculated the amount of the overpayment, the finding of the amount is set aside.

Thus, the amount of the overpayment has not been established as correct. The case shall be returned for the Office for a new determination of the amount of the overpayment of compensation, including preparation of a detailed memorandum explaining the Office’s method of calculation, the calculation itself, and any other relevant information. Following this and

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<sup>9</sup> 5 U.S.C. § 8706(b).

<sup>10</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).

other development as the Office deems appropriate, the Office shall issue an appropriate decision on these issues.

The Board will set aside the Office's finding on the amount of the overpayment. It is, therefore, premature to address waiver of the overpayment and recovery until the exact amount of the overpayment has been determined.

**CONCLUSION**

The Board finds that appellant received an overpayment from May 18 to July 21, 2003 and November 24, 2003 to February 21, 2004 due to a failure to properly deduct health insurance benefits and basic and optional life insurance premiums. The Board finds that the Office incorrectly calculated the amount of the overpayment. The Board further finds that the determination with regard to waiver of overpayment and recovery from continuing compensation is set aside as premature until the amount of the overpayment is determined.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part regarding fact of overpayment and set aside on the issue of amount, waiver and recovery of the overpayment.

Issued: December 9, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board