

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

DINEEN L. JORDAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Haven, CT, Employer**

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**Docket No. 05-996
Issued: December 21, 2005**

Appearances:
Dineen L. Jordan, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' decision dated March 3, 2005 which found an overpayment of compensation and denied waiver. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this overpayment decision.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$832.89 for the period January 7, 1996 through March 1, 2003 because basic life insurance premiums were not deducted from her compensation; and (2) whether the Office abused its discretion in denying waiver of the overpayment.

FACTUAL HISTORY

On April 8, 1991 appellant, a 29-year-old mail handler, injured her lower back while lifting a sack of mail. She filed a claim for benefits on February 15, 1991, which the Office

accepted for lumbar sprain and herniated nucleus pulposus at L4-5 and L5-S1. The Office commenced payment for temporary total disability compensation.

On January 27, 2005 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$832.89 for the period January 7, 1996 through March 1, 2003 because basic life insurance premiums had not been deducted from her compensation. The Office found that appellant was without fault in the matter because she was not aware that the payments she had been receiving were incorrect. The Office advised appellant that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention. The Office further advised appellant that, when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience. The Office informed appellant that she had the right to request a precoupment hearing on the matter of the overpayment and that any response she wished to make with regard to the overpayment should be submitted within 30 days of the January 27, 2005 letter.

In a decision dated March 3, 2005, the Office finalized the preliminary determination regarding the overpayment of \$832.89. The Office noted that appellant had been advised by letter dated January 27, 2005 that a preliminary finding had been made that an overpayment had occurred, but had not responded within 30 days. Therefore, the Office found that appellant was not entitled to waiver.

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 with one or more options.¹ The coverage for basic life is effective unless waived and premiums for basic and optional life coverage are withheld from the employee's pay.² Under the FEGLI program, insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments. The injured employee remains responsible for all insurance premiums. When an under withholding 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 Personnel Management (OPM) upon discovery of the error.³

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$832.89 for the period January 7, 1996 through March 1, 2003. The record shows that an overpayment occurred because basic life insurance premiums were not deducted from her compensation during this period. The Office calculated the amount of overpayment by adding the amount of basic life insurance which was supposed to

¹ 5 U.S.C. § 8702(a); *see James Lloyd Otte*, 48 ECAB 334, 337 (1997).

² *Id.* at § 8707(b).

³ *Id.* at § 8707.

have been deducted from her compensation between January 7, 1996 and April 24, 1999, \$390.60; the amount of basic life insurance which was supposed to have been deducted from her compensation between April 25, 1999 and December 31, 2002, \$424.29; and the amount of basic life insurance which was supposed to have been deducted from her compensation between January 1 and March 1, 2003, \$18.00, to total an overpayment of \$832.89. The Office's worksheets properly document the methodology used in making these individual calculations. The Board finds that the Office properly found that appellant received an overpayment of compensation in the stated amount of \$832.89 for the period January 7, 1996 through March 1, 2003.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129(b) of the Federal Employees' Compensation Act and the implementing regulations, 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.⁴ Waiver of overpayment is not possible if the individual is at fault in creating the overpayment.⁵

The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁶

The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.⁷ Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.⁸

ANALYSIS -- ISSUE 2

On appeal, appellant argues that she had a telephone conversation with an Office claims examiner on March 1, 2005. Appellant contends that the claims examiner granted her request for a 10-day extension to respond to the Office's January 27, 2005 preliminary notice of overpayment, and asserted that she sent out her response form by certified letter dated March 1, 2005, a copy of which accompanied the appeal. Appellant contends that, despite this alleged agreement for an extension, she received the Office's final overpayment decision two days later, on March 3, 2005. The decision did not include any mention of the extension; nor did it include

⁴ 5 U.S.C. § 8129(a)-(b).

⁵ *Jorge O. Diaz*, 51 ECAB 124 (1999).

⁶ 20 C.F.R. § 10.434.

⁷ 20 C.F.R. § 10.438(a).

⁸ 20 C.F.R. § 10.38(b).

any reference to appellant's telephone conversations with the Office claims examiner. Appellant contends that this was unfair on the part of the Office and that therefore its March 3, 2005 overpayment decision should be set aside.

The Board cannot accept appellant's argument on appeal. The Office claims examiner was under no obligation to grant an extension. The Board's jurisdiction is limited to review of the record which was before the Office at the time of the March 3, 2005 decision. The evidence of record indicates that appellant did not submit any response regarding her financial situation within 30 days of the Office's January 27, 2005 preliminary notice of overpayment. As appellant failed to submit any evidence in response to the January 27, 2005 notice, the Office properly denied waiver in conformance with its implementing federal regulations. Pursuant to its regulations, the Office did not abuse its discretion by issuing its March 3, 2005 final decision denying waiver of recovery of the overpayment in the amount of \$832.89.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$832.89 for the period January 7, 1996 through March 1, 2003 because basic life insurance premiums were not deducted from her compensation. The Board finds that the Office did not abuse its discretion in denying waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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