

FACTUAL HISTORY

On December 5, 1991 appellant, then a 57-year-old supervisory police officer, who worked as a police dispatcher, filed a traumatic injury claim alleging that, on November 7, 1991 he reached for the door and felt sharp pain in his back, legs, feet and shoulders. By letter dated May 8, 1992, the Office accepted appellant's claim for a lumbar strain.

Appellant advised the Office that he had canceled his enrollment in the federal employees' health benefits program as of January 6, 1992 but, stated that he still maintained his federal employees' basic life insurance. Numerous computer printouts indicate that the Office failed to deduct premiums from appellant's compensation for basic life insurance coverage.

By letter dated October 28, 2003, the Office advised appellant that his compensation had been adjusted as of October 5, 2003, to account for the deduction of basic life insurance premiums. The Office noted that appellant would receive \$1,035.28 in compensation.

On March 3, 2004 the Office made a preliminary determination that an overpayment of \$1,503.90 arose because basic life insurance premiums were not deducted from appellant's compensation from January 9, 1992 through October 4, 2003. The Office found that appellant was not at fault in the creation of the overpayment and he was advised to submit financial evidence on an accompanying overpayment recovery questionnaire (Form OWCP-20) with respect to waiver of the overpayment within 30 days.

On March 24, 2004 appellant requested waiver, based on a review of the written record. He submitted a completed Form OWCP-20 dated March 24, 2004, which indicated that he had a dependent daughter. The Form OWCP-20 further indicated monthly income of \$1,035.28 in compensation and \$1,000.00 in take-home wages totaling \$2,035.28. Appellant reported the following monthly expenses: (1) \$350.00 for rent/mortgage; (2) \$400.00 for food; (3) \$200.00 for clothing; (4) \$400.00 for utilities; (5) \$265.00 for his daughter's school tuition; (6) \$300.00 for a car note; and (7) \$95.00 for an insurance premium totaling \$2,010.00. Appellant indicated that he had funds of \$80.00 representing cash on hand and \$210.00 in his checking account which totaled \$290.00.

In a decision dated April 7, 2004, the Office finalized its preliminary findings on the fact and amount of overpayment. The Office found that appellant had income of \$2,035.28 and funds of \$360.00, which represented \$80.00 cash on hand and \$280.00 in his checking account totaling \$2,395.40. The Office further found that appellant had monthly expenses of \$2,010.00. The Office determined that appellant was without fault but denied waiver of the overpayment because his monthly income exceeded monthly expenses and, thus, collection of the debt would not be against equity and good conscience. The Office further determined that he could repay the debt without financial hardship at a rate of \$103.00 a month from his continuing compensation.

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.¹ 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.²

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.³ The coverage for basic life insurance is effective unless waived⁴ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁵ 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 will be used to withhold premiums from his or her compensation payments.⁶ 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 Personnel Management upon discovery of the error.⁷

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on November 7, 1991 and received compensation for his disability. Although he advised the Office that he continued to be enrolled in the basic life insurance program, the Office did not deduct any premiums from his compensation for basic life insurance coverage during the period January 9, 1992 through October 4, 2003. This error caused an overpayment of compensation to appellant. The Office should have deducted premiums for basic life insurance when compensation for the employment injury first began.

The record contains an overpayment worksheet showing the premium rate schedule for basic life insurance coverage and the total amount of premiums that should have been deducted from appellant's compensation. The Office multiplied the rate of \$11.10 by 14 weeks during the pay period from January 9, 1992 to January 9, 1993, totaling \$155.40, \$9.90 by 82 weeks during the pay period from January 10, 1993 to April 24, 1999, totaling \$811.80, \$9.30 by 49 weeks during the pay period from April 25, 1999 to January 25, 2003, totaling \$455.70 and \$9.00 by 9 weeks during the pay period from January 26 to October 4, 2003 totaling \$81.00. This showed that the Office should have deducted \$1,503.90 for basic life insurance coverage during the

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8129(a).

³ *Id.* at § 8702(a).

⁴ *Id.* at § 8702(b).

⁵ *Id.* at § 8707.

⁶ *Id.* at § 8706(b).

⁷ *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

period January 9, 1992 through October 4, 2003.⁸ Thus, the Board finds that an overpayment was created in the amount of \$1,503.90.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.⁹ These statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment or recovery [of an overpayment] by the United States may not be made when an 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."¹⁰ Since the Office found appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it is determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

Section 10.436 of the implementing regulation¹¹ provides that 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: (a) [t]he 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) [t]he beneficiary's assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics." The Board has found that an individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹² The Office procedures provide that an individual's assets must not exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment.¹³ For waiver under the "defeat the purpose" of the Act standard, appellant must show both that he needs substantially all of his current income to meet current ordinary and necessary living expenses and that his assets do not exceed the applicable resource base.¹⁴ Section 10.437 of the

⁸ See Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8 (August 2004).

⁹ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁰ 5 U.S.C. § 8129(b); see also 20 C.F.R. § 10.434.

¹¹ 20 C.F.R. § 10.436.

¹² *Frederick Arters*, 53 ECAB __ (Docket No. 01-1237, issued February 27, 2002); see *Howard R. Nahikian*, 53 ECAB __ (Docket No. 01-138, issued March 4, 2002).

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Waiver of Recovery*, Chapter 6.200.6.a(4) (September 1994).

¹⁴ *John Skarbek*, 54 ECAB __ (Docket No. 01-1396, issued June 21, 2002); *Jorge O. Diaz*, 51 ECAB 124, 127 (1999).

regulation¹⁵ states that recovery of an overpayment is also considered to be against equity and good conscience if the 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.

Section 10.438 of the regulation¹⁶ provides that 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.

ANALYSIS -- ISSUE 2

In his recovery questionnaire dated March 24, 2004, appellant indicated that he had monthly income of \$2,035.28 and funds of \$290.00 in assets. Appellant's monthly expenses totaled \$2,010.00. The Office, in its determination, included the assets in the monthly income to find that the monthly income exceeded his monthly expenses by more than \$50.00 and therefore he did not establish that he needed substantially all of his income to meet current ordinary and necessary living expenses. The Board finds that the Office's determination is not proper. Appellant's monthly income of \$2,035.28 exceeds his monthly income of \$2,010.00 only by \$25.28, which falls below the \$50.00 requirement.¹⁷

Further, appellant's assets of \$290.00, as indicated on his March 24, 2004 Form OWCP-20, fall way below the allowed asset resource base of \$5,000 for an individual with one dependent.¹⁸ Thus, the Board finds that appellant needs substantially all of his income to meet current ordinary and necessary living expenses and that given his minimal assets, recovery of the overpayment would cause hardship and defeat the purpose of the Act. Accordingly, the Office improperly denied waiver in this case.¹⁹

CONCLUSION

The Board finds that an overpayment of \$1,503.90 occurred from January 9, 1992 to October 4, 2003, when the Office neglected to deduct premiums for basic life insurance from appellant's compensation during this period. The Board, however, finds that the Office improperly denied waiver of recovery of the overpayment as such recovery would defeat the purpose of the Act.

¹⁵ 20 C.F.R. § 10.437.

¹⁶ *Id.* at § 10.438(a).

¹⁷ *See Arters, supra* note 12.

¹⁸ *Supra* note 13.

¹⁹ In view of the Board's holding on the waiver issue, it will not address the rate of repayment issue.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed with respect to fact and amount of overpayment and reversed with respect to the denial of waiver of the recovery of the overpayment.

Issued: February 10, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member