

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

ANTONIO CASTRO, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX, Employer**

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**Docket No. 04-478
Issued: January 4, 2005**

Appearances:
Antonio Castro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 15, 2003 appellant timely appealed the September 3, 2003 decision by the Office of Workers' Compensation Programs, who found that he received a \$1,195.48 overpayment in compensation due to a failure to deduct life insurance payments from his continuing compensation. The Office also found that he was not entitled to waiver of the overpayment. The Board has jurisdiction over the overpayment issues pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issues are: (1) whether the Office properly found that appellant had received a \$1,195.48 overpayment in compensation; and (2) whether the Office properly found that appellant was not entitled to waiver of the overpayment; and (3) whether the Office properly determined that the overpayment would be recovered by deducting \$50.00 from each continuing compensation payment.

FACTUAL HISTORY

On June 4, 1990 appellant, then a 42-year-old aircraft sheet metal mechanic, was standing on a small ladder while working on the belly of a B-52 bomber when he fell. He complained of pain in his back, neck and right arm. The Office accepted appellant's injury as a contused shoulder and thoracic-lumbar strain. He worked intermittently thereafter at light duty and received compensation for the period he did not work, from October 21 to December 29, 1990. Appellant stopped working on January 12, 1991 because he was restricted from working. He received temporary total disability beginning January 13, 1991. On March 9, 2001 appellant underwent surgery for degenerative disc disease of the cervical spine with spondylosis, radiculopathy and instability. Dr. James Simmons performed an anterior discectomy of C3-4, C4-5, C5-6 and C6-7, excision of osteophytes and fusion of the cervical spine from C3 to C7.

In an August 19, 2003 letter, the Office informed appellant that it had made a preliminary finding that he had been overpaid \$1,195.48. The Office indicated that it had failed to collect the premiums for his basic life insurance from October 25, 1990 through July 12, 2003. The Office stated that appellant was without fault in the creation of the overpayment. The Office indicated that, when a claimant is found to be without fault in the creation of the overpayment, recovery of the overpayment could not be made if recovery would defeat the purpose of the Federal Employees' Compensation Act or be against equity and good conscience. The Office explained that the purpose of the Act was to provide at least a basic income for beneficiaries. It stated that recovery would be against equity and good conscience if a claimant, acting on inaccurate information from the Office, gave up a valuable right such as quitting a job that could not be regained; spent or committed funds in ways that he or she otherwise would not have done and suffered a financial loss as a result; or would suffer severe financial hardship in trying to repay the debt. The Office informed appellant of his right to request a telephone conference with it, request that the district Office issue a final decision based on the written evidence or request a prerecoupment hearing. The Office stated that, to obtain waiver of the overpayment, appellant had to provide a detailed explanation of his reasons for seeking waiver, complete an Office form on his monthly expenses, income and assets and provide documents supporting the description of his income and expenses. The Office warned appellant that it would deny waiver if he did not submit the information requested within 30 days.

In a September 29, 2003 decision, the Office finalized its preliminary decision that appellant was not at fault in the creation of the overpayment was correct because he had no way of knowing that the Office was not deducting the life insurance premiums. The Office further found, however, that appellant was not entitled to waiver of recovery of the overpayment because he had not submitted any information to support that repayment of the debt would result in financial hardship. In a November 30, 2003 letter, the Office sent appellant a second notice that it had not received payment from him. The Office indicated that, if it did not receive repayment or some indications that appellant intended to cooperate within 30 days, it might add further charges to the debt such as interest on the debt or the administrative charges for sending any additional demands for payment. The Office warned that it could ask the employing establishment to take the repayment out of his salary, that it could ask the Office of Personnel Management (OPM) to take the repayment out of his retirement account or if the repayment of the debt remained delinquent, the Office could refer the matter to the Department of the Treasury for collection by administrative offset from any federal monies which might be due him. The

Office indicated that appellant had the right to see the records relating to the overpayment, enter into a mutual written repayment agreement or request a review of the Office's decision about the amount of the debt, its past-due status and its legal enforceability. In a December 29, 2003 decision, the Office informed appellant that, in accordance with the overpayment decision, it would deduct \$50.00 from each of his compensation payments beginning with the December 27, 2003 compensation check.

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 and one or more of the options.¹ The coverage for basic life is effective unless waived² and premiums for basic and optional life coverages are withheld from the employee's pay.³ At separation from the employing establishment, 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 while the compensation was an employee will be used to withhold premiums from his or her compensation payments.⁴ When an underwithholding of life insurance premium 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.⁵

ANALYSIS -- ISSUE 1

Appellant was injured on June 4, 1990. In a November 20, 1990 claim for compensation Form (CA-7), his supervisor indicated that appellant had elected basic life insurance and optional life insurance, including options A, B and C. He reported that the last day of the period in which the deductions were last made was December 7, 1990. In a January 8, 1991 claim form, the supervisor did not give a date for when the deductions were last made. Although appellant had authorized deductions for basic and optional life insurance, the Office failed to deduct the life insurance premiums from appellant's compensation checks. This error caused an overpayment of compensation to appellant. The Office should have deducted premiums for appellant's life insurance beginning at least by January 11, 1991, when he stopped working and began receiving temporary total disability compensation. Therefore, the Office properly found that appellant had received an overpayment in compensation. The insurance premiums remain appellant's responsibility even though he was without fault in the creation of the overpayment.

The Office completed an overpayment worksheet showing the premium rate schedule for basic life and optional life insurance for the periods prior to as well as after retirement. The

¹ 5 U.S.C. § 8702(a).

² 5 U.S.C. § 8702(b).

³ 5 U.S.C. § 8707.

⁴ 5 U.S.C. § 8706(b).

⁵ 5 U.S.C. § 8707(d); see *James Lloyd Otte*, 48 ECAB 334 (1997).

Office indicated that for the period October 25, 1990 to January 1, 1993, \$8.14 should have been withheld from each compensation check for appellant's life insurance. The Office multiplied \$8.14 by 27 pay periods and determined that he received a \$219.78 overpayment in compensation. For the period January 2, 1993 to April 24, 1999, the Office determined that \$7.26 should have been withheld for 82 pay periods. This omission resulted in having appellant receive an overpayment of \$595.33 for that period. For the period April 25, 1999 to January 25, 2003, the Office determined that \$6.82 should have been withheld from compensation each pay period for 49 pay periods which resulted in an overpayment of \$334.18. For the period January 26 to July 12, 2003, the Office should have withheld \$6.60 for seven pay periods which resulted in an overpayment of \$46.20 for that period. The Office, therefore, properly concluded that appellant received a \$1,195.48 overpayment in compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act provides that an overpayment of compensation 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. The fact that appellant was without fault in creating the overpayment does not, under the Act, preclude the Office from recovering all or part of the overpayment. The Office must exercise its discretion to determine whether waiver is wanted under either the "defeat the purpose of the Act" or the "against equity and good conscience" standards pursuant to the guidelines set forth in sections 10.436 and 10.437 of the implementing regulation.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 their repayment schedule, if necessary. Failure to submit the requested information within 20 days of the request will result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.⁷

ANALYSIS -- ISSUE 2

Appellant may request waiver of recovery of the overpayment but he must show that the recovery would defeat the purpose of the Act or be against equity and good conscience. Those determinations depend on the submission of financial information to establish such issues as whether his expenses exceed his income, the loss of a valuable right without the ability to regain that right or a financial loss caused by the dependence on the incorrect compensation payment or dependence on receiving compensation. In this case, appellant did not submit the financial information within 30 days of the Office's request. The Office, therefore, properly denied appellant's request for waiver of recovery of the overpayment.

⁶ *Linda Hilton*, 52 ECAB 476, 478-79 (2001); 20 C.F.R. §§ 10.436, 10.437.

⁷ 20 C.F.R. § 10.438.

LEGAL PRECEDENT -- ISSUE 3

The Office's regulation⁸ provides that, whenever an overpayment has been made to an individual who is entitled to further benefits, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of further payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any resulting hardship upon such individual.⁹ In establishing the initial collection strategy, the Office must weigh the individual's income, ordinary and necessary expenses and assets in a manner similar to the waiver considerations.¹⁰ When an individual fails to provide requested information on income, expenses and assets, the Office should follow the minimum collection guidelines, which stated in general that the government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹¹

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹²

ANALYSIS ISSUE 3

When a claimant fails to provide the necessary financial information to determine the amount of money that should be deducted from each compensation payment, the Office has discretion in establishing the amount to be deducted from each paycheck. Under the Office's procedures, the Office can withhold a minimum of \$50.00 per pay period¹³ which was the amount that the Office chose to withhold. Appellant has not submitted any evidence that deducting \$50.00 from each compensation check was a manifest error, an unreasonable exercise of judgment or contrary to logic and any probable deduction from established facts. The Office, therefore, did not abuse its discretion in setting the recovery amount at \$50.00 per compensation payment.

CONCLUSION

The Office properly found a \$1,195.48 overpayment properly denied appellant's request for waiver of recovery of the overpayment in compensation because he did not submit the

⁸ 20 C.F.R. § 10.440(a).

⁹ *Jan K. Fitzgerald*, 51 ECAB 659, 663 (2000).

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4(b)(1)(a) (September 1994).

¹¹ *Gail M. Roe*, 47 ECAB 268, 274 (1995).

¹² *Cleo R. Hatch*, 49 ECAB 636 (1998).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Overpayments and Collections, *Debt Liquidation*, Chapter 6.300.10(c) (September 1994).

financial information required to make a decision on whether he should receive such a waiver and properly set recovery at \$50.00 per compensation payment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2003 be affirmed.

Issued: January 4, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member