

May 11, 1998,¹ the Board found that the Office improperly terminated appellant's compensation effective March 8, 1994 for refusing an offer of suitable work and improperly determined that he received a \$4,692.20 overpayment of compensation.² After the Board's decision appellant's compensation benefits were reinstated effective March 8, 1994.³

The record contains several documents, including a 50-B form (notification of personnel action) approved on June 10, 1994, which showed that appellant retired from the employing establishment effective June 21, 1994. The 50-B form indicates that he was covered by elected basic life insurance at that time, but it does not indicate the precise date of the election of that coverage.

The record contains documents of the Office of Personnel Management (OPM) dated June 12, 2000 and April 18, 2001, which indicate that life insurance premiums should be withheld from payment. The forms contain check marks in "None" boxes, indicating that no reduction in postretirement basic life insurance was requested.⁴

The record contains a September 10, 1992 document memorializing a telephone message which an Office official received from appellant on August 16, 2002, who advised that he had elected no reduction in his basic life insurance after retirement but noticed that the premiums were not being deducted from his payments. The official stated: "The above issue was researched with OPM (Ms. Blanks), that advised the effective date of the postretirement election was January 31, 1994."⁵

In a letter dated May 4, 2004, the Office made a preliminary determination that appellant received a \$4,771.38 overpayment because life insurance premiums were not deducted during the periods January 31 to August 26, 1994, October 13, 1995 to December 5, 1997 and March 26, 2000 to August 10, 2002.⁶ It found that appellant was not at fault in the creation of the overpayment. In a memorandum accompanying the letter, the Office stated: "An overpayment occurred in this case when the Office was notified by letter dated April 18, 2001,

¹ Docket No. 86-871 (issued May 11, 1998).

² The \$4,692.20 overpayment bears no relation to the overpayment at issue in the present case.

³ By decision dated November 1, 2000, the Office determined that appellant received a \$6,971.28 overpayment because he received both compensation from the Office and sick leave from the employing establishment during the period March 8 to June 19, 1994. The Office found that he was not at fault in the creation of the overpayment and that the overpayment was subject to waiver as recovery would defeat the purpose of the Federal Employees' Compensation Act. The \$6,971.28 overpayment also bears no relation to the overpayment at issue in the present case.

⁴ Appellant switched back and forth several times between receiving OPM and Office benefits. He currently receives Office benefits.

⁵ The record contains a June 30, 1998 letter in which appellant indicated that he had life insurance coverage but that no deduction was shown in the attached documents. One of the attached documents indicated that beginning June 22, 1994 the monthly premium for life insurance was \$70.98.

⁶ The Office found that appellant first had basic life insurance deducted from his Office compensation effective August 11, 2002. The record contains a compensation print-out which supports this finding.

that the claimant's postretirement election was No Reduction. In a telephone conversation with a representative from OPM, it was discovered that the effective date of the postretirement election was January 31, 1994." The record contains worksheets which provide further details regarding the periods that life insurance premiums were not deducted and the amounts of the premiums. The documents show that OPM made deductions for life insurance during the periods August 27, 1994 to October 12, 1995 and December 6, 1997 to March 25, 2000.

By decision dated July 14, 2004, the Office finalized the overpayment, finding that appellant received a \$4,771.38 overpayment and that he was not at fault in the creation of the overpayment. The Office did not provide any further rationale for its determination regarding the fact and amount of the overpayment. It noted that appellant did not submit an overpayment questionnaire as requested and determined that he was not entitled to waiver of the overpayment. The Office determined that the overpayment should be recovered by deducting \$87.00 every 28 days from his continuing Office compensation.

LEGAL PRECEDENT -- ISSUE 1

The 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.⁷ 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.⁸

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.⁹ The coverage for basic life insurance is effective unless waived¹⁰ and the premiums for basic and optional life coverage are withheld from the employee's pay.¹¹ 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.¹² 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.¹³

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8129(a).

⁹ 5 U.S.C. § 8702(a).

¹⁰ 5 U.S.C. § 8702(b).

¹¹ 5 U.S.C. § 8707.

¹² 5 U.S.C. § 8706(b).

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

ANALYSIS -- ISSUE 1

In this case, the record contains documents showing that appellant retired from the employing establishment effective June 21, 1994. The record further reflects that he had basic life insurance coverage from at least his time of retirement on June 21, 1994. The 50-B form memorializing appellant's retirement indicates that he was covered by basic life insurance at the time of retirement. Moreover, OPM documents dated June 12, 2000 and April 18, 2001 have check marks indicating that life insurance premiums should be withheld from payment and check marks in "None" boxes indicating that no reduction in postretirement basic life insurance was requested.

Despite the fact that appellant had basic life insurance coverage from the time of his retirement on June 21, 1994 deductions from his compensation for basic life insurance benefits were not made until August 11, 2002.¹⁴ When an underholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation to appellant because the Office must pay the full premium to OPM upon discovery of the error.¹⁵ He submitted no evidence showing that he wanted to convert or cancel the basic life insurance at any point and he is responsible for the life insurance premiums not deducted from his compensation benefits.¹⁶ Thus, an overpayment was created by the underdeduction of premiums for the life insurance appellant elected.

Although the fact of overpayment has been established, the amount of the overpayment is unclear. This is because the date that appellant's basic life insurance coverage started is uncertain. The record reflects that he had basic life insurance coverage from the time he retired on June 21, 1994. However, the Office determined that appellant's life insurance coverage started on January 31, 1994 and calculated the amount of the overpayment based on the nondeduction of premiums starting on that date. The evidence supporting that coverage started on January 31, 1994 is ambiguous. The record contains a September 10, 1992 document in which an Office official indicated that he had "researched" the question of appellant's life insurance coverage with an OPM official and that official advised that the "effective date of the postretirement election was January 31, 1994." This document suggests that appellant requested life insurance upon retiring effective January 31, 1994, but the record reflects that he did not retire until June 21, 1994. The record does not contain copies of any documents clearly showing what date appellant elected to start life insurance coverage, such as the actual election forms he might have completed or some other unambiguous record of the election date.

¹⁴ The record reflects that the Office calculated the overpayment for nondeduction of life insurance premiums for the periods January 31 to August 26, 1994, October 13, 1995 to December 5, 1997 and March 26, 2000 to August 10, 2002. The record further reflects that the Office did not calculate an overpayment for the periods August 27, 1994 to October 12, 1995 and December 6, 1997 to March 25, 2000 because OPM made deductions for life insurance during these periods. As noted above appellant switched back and forth several times between receiving OPM and Office benefits, but he remained obligated to pay premiums for any period he had life insurance coverage.

¹⁵ 5 C.F.R. § 872.401(h); *Calvin W. Scott*, 39 ECAB 1031, 1036 (1988).

¹⁶ See *James Lloyd Otte*, *supra* note 13 at 336-37.

Given these circumstances, the Board is unable to make an informed determination regarding the amount of the overpayment appellant received due to the nondeduction of basic life insurance premiums. The case will be remanded to the Office for further development of the evidence concerning the date that appellant elected to have life insurance coverage and any other information which would aid in an accurate calculation of the overpayment created due to such nondeduction.¹⁷

Due to the Board's disposition of the first issue of the present case, it is premature to consider the second and third issues, *i.e.*, whether the Office abused its discretion by refusing to waive recovery of the overpayment and whether the Office properly required repayment of the overpayment by deducting \$87.00 from appellant's compensation payments every 28 days. After such development it deems necessary, the Office should issue an appropriate decision which addresses the amount of the overpayment, appellant's entitlement to waiver of the overpayment and the method of recovery of the overpayment.

CONCLUSION

The Board finds that the Office has established the fact of overpayment. The case is remanded to the Office for further development concerning the amount of the overpayment, appellant's entitlement to waiver of the overpayment and the method of recovery of the overpayment, to be followed by an appropriate decision.

¹⁷ The Office's responsibility in the development of the factual evidence is particularly important when such evidence is of the character normally obtained from the employing establishment or other government source. *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2004 is affirmed with respect to the fact of overpayment. The decision is set aside with respect to the amount of the overpayment and the issues of waiver and method of recovery and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 28, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member