

pulposus at L3-4 and L4-5 and a lumbar discectomy and fusion at L4-5. In January 2001, the Office determined that appellant had been paid at an incorrect pay rate beginning September 26, 1997. The correct pay rate effective September 26, 1997 was \$647.71 whereas appellant's compensation for temporary total disability had been based on an April 3, 1995 pay rate of \$610.15. The Office, therefore, recalculated appellant's disability compensation for the period September 26, 1997 to December 30, 2000 based on the correct pay rate of \$647.71.

On March 23, 2001 the Office made a direct deposit to appellant's checking account in the amount of \$1,198.00. The payment was for the period September 26, 1997 to December 30, 2000. A week later on March 30, 2001 the Office made another direct deposit of \$685.59, which also covered the period September 26, 1997 to December 30, 2000. In a letter dated April 5, 2001, the Office advised appellant that it had neglected to deduct basic life insurance premiums and he was not entitled to the \$1,198.00 payment. He was, however, entitled to the \$685.59 payment.

On September 28, 2004 the Office issued a preliminary finding of an overpayment of benefits in the amount of \$1,198.00 for the period September 26, 1997 to December 30, 2000. The Office explained that appellant's pay rate was corrected and he was issued a check for the difference in the amount of \$1,198.00. However, it was later discovered that basic life insurance premiums had not been deducted for the period in question and a new check was subsequently issued for the correct amount of \$685.59. Therefore, appellant was overpaid in the amount of \$1,198.00. The Office further advised appellant that he was at fault in creating the overpayment because he received two checks for the same period of time and reasonably should have been aware that he was not entitled to both checks. The Office issued a final overpayment decision on November 26, 2004, which found appellant at fault in creating the \$1,198.00 overpayment.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance (FEGLI) program, civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.¹ The basic life insurance coverage is effective unless waived and premiums for basic and any optional life insurance coverage selected are withheld from the employee's pay.² At separation from the employing establishment, the FEGLI coverage will either terminate or be continued under "compensation" status. If the compensation recipient 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.³ When FEGLI

¹ 5 U.S.C. § 8702(a).

² 5 U.S.C. §§ 8702(b) and 8707.

³ 5 U.S.C. § 8706(b).

premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because upon discovery of the error the Office must pay the full premium to the Office of Personnel Management.⁴

ANALYSIS -- ISSUE 1

The Board finds that the issue of the amount of the overpayment is not in posture for decision. The payments appellant received on March 23 and 30, 2001 covered the period September 26, 1997 to December 30, 2000. The difference in the two payments was \$512.41, which was reportedly due to unpaid basic life insurance premiums. However, the Office's March 27, 2001 calculation and adjustment for basic life premiums covers the period September 26, 1997 to January 7, 2001, for a total unpaid premium of \$493.10. Not only does the \$493.10 premium cover a period beyond the timeframe of the alleged overpayment, but also the amount does not correspond with the \$512.41 difference between the March 23 and 30, 2001 payments. The Office has not adequately explained how it calculated the amount of overpayment and the Board is unable to discern from the record the correct amount of the overpayment. Accordingly, the Office's finding regarding the amount of the overpayment is set aside.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 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.⁵ Section 10.433 of the implementing regulations specifically provides that the Office may consider waving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁶ Recipient will be found at fault in creating an overpayment if he accepted a payment which he or she knew of should have known to be incorrect.⁷

ANALYSIS -- ISSUE 2

The Office found that appellant was at fault in creating the overpayment because he "received two checks for the same period of time" and he "reasonably should have been aware that he was not entitled to both checks." Although the March 23 and 30, 2003 direct deposit payments were for the same time period, they were for different amounts. There is no indication from the record that appellant received any correspondence with either payment explaining the reason for the payment. While the Office informed appellant of its mistake by letter dated April 5, 2001, this information was issued almost two weeks after the Office mistakenly paid appellant \$1,198.00. The two payments differed in amount, they were directly deposited in

⁴ 5 U.S.C. § 8707(d); *Keith H. Mapes*, 56 ECAB ___ Docket No. 03-1747 (issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁵ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437 (1999).

⁶ 20 C.F.R. § 10.433(a) (1999).

⁷ *Id.*

appellant's checking account, and the Office did not provide any contemporaneous correspondence explaining the reason for the March 23 and 30, 2001 payments. Given these factors, the Board finds that the record does not support the Office's finding that appellant was at fault in creating the overpayment.

CONCLUSION

The Board finds that the issue of the amount of the overpayment is not in posture for decision. Further, appellant is without fault in creating the alleged overpayment.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2004 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: July 15, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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