

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

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**WILLIAM F. KAMM, Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Philadelphia, PA, Employer**

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**Docket No. 04-1806  
Issued: June 10, 2005**

*Appearances:*  
*William F. Kamm, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On July 12, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated June 10, 2004, wherein the Office hearing representative determined that an overpayment occurred in the amount of \$9,701.26, that appellant was not at fault in the creation of the overpayment and that waiver was not warranted. The hearing representative also determined that \$175.00 would be deducted every 28 days from appellant's compensation check. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

**ISSUES**

The issues are: (1) whether an overpayment of \$9,701.26 occurred from October 23, 2001 through June 13, 2003; (2) whether the Office properly denied waiver; and (3) whether the Office abused its discretion in setting the rate of recovery from continuing compensation at a rate of \$175.00 every 28 days.

## **FACTUAL HISTORY**

On September 17, 2001 appellant, a 43-year-old regular mail handler, filed a traumatic injury claim alleging that he injured his left leg and back on September 8, 2001 in the performance of duty.<sup>1</sup> The Office accepted the claim for aggravation of a recurrent herniated disc and lumbar radiculopathy. Appellant has not returned to work and was placed on the periodic rolls for workers' compensation benefits.

Appellant noted on his multiple claims for compensation (Form CA-7), that he was enrolled in basic life and optional life insurance. The employing establishment listed his base pay rate as \$18.60 and he also received an additional \$4.65 per hour for working on Sunday.

In a December 4, 2001 pay rate calculation form, the Office determined appellant's weekly base rate was \$744.00 plus \$37.20 for Sunday premium which totaled \$781.20 for a weekly pay rate.

Numerous computer printouts indicate that the Office deducted premiums from appellant's compensation for optional life insurance, but not for his basic life coverage. The computer printout for the period covering October 23 to November 30, 2001 noted a pay rate of \$930.00, but this was crossed out and changed to a pay rate of \$781.20.<sup>2</sup> The remaining computer printouts for the period December 1, 2001 through April 18, 2003 showed a pay rate of \$930.00. Computer printouts for the period February 22 to April 18 and 19, 2003, noted a weekly pay rate of \$930.00 and included a deduction for basic life insurance premium.

By letter dated July 1, 2003, the Office made a preliminary determination that appellant was overpaid compensation benefits in the amount of \$9,701.26. The Office noted that the overpayment occurred because he was paid at the incorrect pay rate of \$930.00 instead of his correct pay rate of \$781.20 for the period October 23, 2001 through June 13, 2003 and basic life insurance had not been deducted during this period. In an attached worksheet, the Office noted that appellant received compensation payment for the period October 23, 2001 to June 13, 2003, in the amount of \$59,957.25, when he should have received \$49,437.51, based upon the Office's use of an incorrect pay rate. The Office credited \$757.28 for payment of optional life insurance and \$61.20 for payment of basic life insurance, which resulted in a total overpayment of \$9,701.26.

In a July 13, 2003 reply, received by the Office on July 31, 2003, appellant responded to the Office's overpayment recovery questionnaire, requested waiver and an oral hearing. He listed his total monthly income as \$2,700.00. Appellant listed his monthly expenses as \$470.00 for rent, \$400.00 for food, \$150.00 for clothing, \$645.00 for utilities and \$400.00 for other expenses. Monthly debt payments were \$222.00 to Albert Einstein Medical Center. Appellant noted funds on hand as \$250.00. He submitted supporting documentation.

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<sup>1</sup> This was assigned claim number 03-2003152. On December 5, 2001 the Office doubled this claim with appellant's previous claim 03-250794, which had been accepted for lumbar neuritis. The Office then assigned claim number 03-250794 as the master file number.

<sup>2</sup> The Board notes that, although the pay rate was manually changed to \$781.20, it appears that the computations were based on the \$930.00 pay rate.

A hearing was held on March 3, 2004 at which appellant was present, provided testimony and submitted evidence. He did not dispute the amount of the overpayment. At the hearing appellant noted his rent went up to \$501.00 from \$470.00, that his monthly food expenses were \$400.00, monthly clothing expenses were \$150.00, his monthly utilities for gas and electric were \$650.00, the monthly cable bill was \$57.00, his monthly telephone bill was \$58.00 or \$59.00, a monthly car payment of \$200.00, an additional monthly credit card payment in the amount of \$50.00 and monthly car insurance for \$200.00.

By decision dated June 10, 2004, the hearing representative determined that an overpayment occurred in the amount of \$9,701.26 and that appellant was not at fault in the creation of this overpayment. The hearing representative noted that he has a monthly income of \$2,700.00. The hearing representative then determined that appellant had monthly expenses of \$2,292.00. In reaching this conclusion, he considered \$470.00 for rent, \$400.00 for food, \$150.00 for clothing, \$650.00 for utilities, \$400.00 for miscellaneous expenses and \$222.00 for a medical bill. The hearing representative then added the \$50.00 minimum monthly credit payments to find appellant's total monthly expenses were \$2,342.00. The hearing representative found that repayment of the overpayment would not cause a financial hardship on the part of the claimant and that repayment would not deprive the claimant of resources needed for ordinary and necessary living expenses as he did not require substantially all of his income to meet his ordinary and necessary living expenses. In reaching this determination, the hearing representative noted that appellant's expenses of \$2,342.00 were below his income of \$2,700.00 by more than the \$50.00 resource base; therefore, recovery would neither defeat the purpose of the Federal Employees' Compensation Act nor be against equity and good conscience. He then found that a repayment schedule of \$175.00 every 28 days from continuing compensation was appropriate.

### **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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> The coverage for basic life insurance is effective unless waived<sup>6</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>7</sup> At

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8702(a).

<sup>6</sup> *Id.* at § 8702(b).

<sup>7</sup> *Id.* at § 8707.

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.<sup>8</sup> 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 Office of Personnel Management upon discovery of the error.<sup>9</sup>

Compensation benefits are computed based on an employee’s pay rate during the relevant timeframe.<sup>10</sup> In computing one’s pay rate, section 8114(e) of the Act provides for the inclusion of certain “premium pay” received.<sup>11</sup> However, overtime pay, among other things, is excluded from consideration in determining one’s rate of pay.<sup>12</sup> In cases where compensation payments were based erroneously on a pay rate greater than that to which the employee was entitled, the difference between the compensation the employee should have received and did receive constitutes an overpayment of compensation.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

Appellant sustained an injury in the performance of duty on September 8, 2001 and received compensation for his disability. Although he had authorized deductions for basic life insurance, the Office deducted no premiums from his compensation for basic life or post-retirement basic life coverage. 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 Board finds, therefore, that the Office properly determined that an overpayment of compensation was created due to the Office’s failure to deduct basic life insurance premiums. The Board will affirm the Office’s June 10, 2004 decision on the issue of fact of overpayment.

The record contains an overpayment worksheet showing the premium rate schedule for basic life. For basic life, the Office took appellant’s adjusted base pay of \$38,688.00 and multiplied by the weekly premium rate of \$6.35 in effect from October 23, 2001 to December 31, 2002 and multiplied that by the number of days from October 23, 2001 through December 31, 2002. This showed that the Office should have deducted \$217.71 for basic life coverage during that period.<sup>14</sup> Using the same formula and a weekly premium rate of \$6.15, the

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<sup>8</sup> *Id.* at § 8706(b).

<sup>9</sup> *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).

<sup>10</sup> 5 U.S.C. §§ 8101(4), 8114; see *Marco Padilla*, 51 ECAB 202, 207-08 (1999).

<sup>11</sup> 5 U.S.C. § 8114(e).

<sup>12</sup> *Id.*

<sup>13</sup> See generally *Monte Fuller*, 51 ECAB 571 (2000) (discussion of proper determination of pay rate).

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8 (August 2004).

Office calculated that it should have deducted \$72.04 for basic life coverage from January 1 to June 13, 2003.<sup>15</sup>

The Office also determined that appellant received an overpayment of compensation due to an incorrect pay rate for the period October 23, 2001 to June 13, 2003. During this period the Office used an incorrect pay rate of \$930.00 when the correct pay rate was \$781.20. On multiple claims for compensation, the employing establishment noted appellant's base pay rate as \$18.60 and that he received an additional \$4.65 per hour for working on Sunday. Thus, appellant's base weekly pay rate would be \$744.00 based upon \$18.60 multiplied by 40 which would be supplemented by Sunday differential pay of \$37.20 based upon \$4.65 multiplied by 8.

The Office explained how the amount of the overpayment was calculated. Appellant received compensation payment for the period October 23, 2001 through June 13, 2003 in the amount of \$59,957.25, when he should have received \$49,437.51. The Office credited \$757.28 for payment of optional life insurance and \$61.20 for payment of basic life insurance, which resulted in a total overpayment of \$9,701.26. The Board will affirm the June 10, 2004 decision on the amount of the overpayment.

### **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 the statutory guidelines.<sup>16</sup> 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 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."<sup>17</sup> 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 determined that recovery of the overpayment would neither defeat the purpose of the Act, nor be against equity and good conscience.

The guidelines for determining whether recovery of an overpayment would defeat the purpose of the Act or would be against equity and good conscience are set forth in section 10.436 and 10.437, respectively, of Title 20 of the Code of Federal Regulations.

Section 10.436 provides generally, that an overpayment would defeat the purpose of the Act if recovery would cause hardship because a beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expense and the beneficiary's assets do not exceed a specified amount as set by the Bureau of

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<sup>15</sup> The Board notes that the procedure manual states that the premium in effect from January 12, 2003 is 0.150. The Office incorrectly used the premium pay rate of \$6.15 for the period January 1 to 11, 2003. *Id.* at Chapter 5.401 -- x2. The Board finds any mistake to be harmless error as the difference would be less than \$0.40 for the period January 1 to 11, 2003.

<sup>16</sup> *Rudolph A. Geci*, 51 ECAB 423, 424 (2000).

<sup>17</sup> 5 U.S.C. § 8129(b).

Labor Statistics.<sup>18</sup> Section 10.437 provides, generally, that recovery of the overpayment would be against equity and good conscience if any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt, if an individual, in reliance on such payments or notice that such payments would be made, gave up a valuable right or changes his or her position for the worse.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Office properly determined that appellant was without fault in the creation of the overpayment as he did not know that his basic life premiums were not properly being deducted from the compensation payments and that the Office used an incorrect pay rate in calculating his compensation payments. Accordingly, the Office proceeded to determine whether he was entitled to waiver of the overpayment. The Board finds that the Office properly exercised its discretion when it determined that appellant was not entitled to waiver due to financial hardship. He submitted information that his income was \$2,700.00. Appellant indicated that his monthly expenses totaled \$2,342.00. Accordingly, as his expenses of \$2,342.00 were less than his income of \$2,700.00 by \$358.00, he has not established that he was entitled to a waiver based on financial hardship as he does not need substantially all of his income to meet his ordinary and necessary living expenses. There is no evidence in this case, nor did appellant allege that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received from October 21, 2001 through June 13, 2003. The Board finds, therefore, that the Office properly determined that waiver was not warranted as it would neither defeat the purpose of the Act, nor be against equity and good conscience.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 provides that, if an overpayment of compensation has been made to an individual entitled to further payments and no refund is made, the Office shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.<sup>20</sup>

### **ANALYSIS -- ISSUE 3**

With respect to the Office's decision to deduct \$175.00 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is in accordance with section 10.441(a). In exercising its authority under section 10.441(a), the Office must take into account the "probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors so as to minimize any hardship." Given the financial information provided by appellant and his list of his expenses on the repayment questionnaire form, which demonstrates that his monthly income (including

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<sup>18</sup> 20 C.F.R. § 10.436.

<sup>19</sup> *Id.* at § 10.437.

<sup>20</sup> *Id.* at § 10.441.

compensation benefits), exceeds his monthly expenses by \$358.00, the Board finds that the Office reasonably imposed a repayment schedule of \$175.00 every four weeks.

**CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$9,701.26, for the period October 23, 2001 through June 13, 2003, because basic life insurance premiums were not deducted from his compensation and the Office had incorrectly calculated appellant's pay rate. The Board also finds that the Office did not abuse its discretion in denying waiver of the recovery of the overpayment and in requiring repayment by deducting \$175.00 every four weeks from his continuing compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' dated Compensation Programs June 10, 2004 is affirmed.

Issued: June 10, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member