



grounds that she refused an offer of suitable work.<sup>1</sup> The Board found that the record contained an unresolved conflict in medical opinion. On the second appeal, the Board reversed the Office's June 13 and January 16, 2001 decisions terminating appellant's compensation on the grounds that she had no further employment-related disability.<sup>2</sup> The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

Computer printouts support that the Office deducted premiums from appellant's compensation for optional life insurance under Code Y and did not deduct premiums for basic life or post-retirement basic life coverage.

On March 24, 2004 the Office of Personnel Management (OPM) advised the Office that appellant had changed her life insurance coverage from a 75 percent reduction to no reduction effective December 13, 2002. The OPM further noted that her life insurance code was U1.

In a worksheet dated May 21, 2004, the Office calculated that appellant received an overpayment of \$1,340.43, because it did not deduct premiums for basic life insurance from March 1, 2000 to April 17, 2004, over deducted premiums for optional life insurance under Code Y instead of Code U for March 1, 2000 to April 17, 2004 and did not deduct post-retirement life insurance premiums from December 13, 2002 to April 17, 2004. The Office, in a worksheet dated April 9, 2004, determined that appellant's unadjusted and adjusted salary for insurance purposes was \$34,000.00. In a worksheet dated May 3, 2004, the Office found that her adjusted salary for insurance purposes was \$36,000.00. In performing its calculations, it appears that the Office used \$34,000.00 as appellant's adjusted salary. The Office obtained the information regarding basic life and post-retirement life insurance premiums from a basic life and postretirement basic life insurance worksheet.

On May 21, 2004 the Office notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$1,340.43, because it did not deduct premiums for basic life from March 1, 2000 to April 17, 2004 and did not deduct premiums for post-retirement basic life from December 13, 2002 to April 17, 2004. The Office determined that, from March 1, 2000 to April 17, 2004, it should have deducted \$562.29 for basic life premiums and that, from December 13, 2002 to April 17, 2004, it should have deducted \$1,019.78 for post-retirement basic life premiums. The Office further found that it should have deducted \$1,005.09 for optional life insurance under Code U for the period March 1, 2000 to April 17, 2004 rather than the \$1,246.73 deducted under Code Y. The Office concluded that the overpayment due to the failure to deduct premiums for basic life and post-retirement basic life "minus the over deduction of Code Y" constituted an overpayment of \$1,340.43. The Office found that appellant was not at fault in the creation of the overpayment and informed her that she should complete the enclosed overpayment recovery questionnaire and submit financial documents to support any request for waiver of the overpayment.

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<sup>1</sup> Docket No. 97-2379 (issued June 7, 1999).

<sup>2</sup> Docket No. 02-159 (issued July 26, 2002). The Board issued an order denying a petition for reconsideration on January 10, 2003.

Appellant submitted an overpayment recovery questionnaire dated June 21, 2004 and requested a decision based on the written evidence. She listed her monthly income as \$2,504.00 and her monthly expenses as \$1,040.00 for housing, \$400.00 for food, \$100.00 for clothing, \$300.00 for utilities and miscellaneous household expenses of \$675.00. Appellant listed assets of \$100.00 in a checking account. She related that she was behind on her mortgage payments and used all her income to paying her “normal living expenses.” Appellant enclosed a letter dated June 26, 2003 from a (Chapter 13) Trustee, listing the address to send payments.

In a decision dated July 13, 2004, the Office finalized its finding that appellant received an overpayment of \$1,340.43, because it did not deduct basic life insurance from March 1, 2000 to April 17, 2004, over deducted optional life insurance from March 1, 2000 to April 17, 2004 and failed to deduct post-retirement basic life insurance from December 13, 2002 to April 17, 2004. The Office finalized the finding that appellant was without fault in the creation of the overpayment but determined that she was not entitled to waiver because her income exceeded her expenses by \$207.42 per month.<sup>3</sup> The Office determined that it would recover the overpayment from the amount it owed appellant because it had not included cost-of-living expenses in her compensation payments since April 2004.

### **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 duty.<sup>4</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>5</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>6</sup> The coverage for basic life insurance is effective unless waived<sup>7</sup> and the premiums for basic and optional life coverage are withheld from the employee’s pay.<sup>8</sup> 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

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<sup>3</sup> The Office noted that appellant received periodic roll payments of \$1,821.00 every 28 days which yielded a total monthly income of \$1,959.42. The Office added her compensation of \$1,959.42 to her social security income of \$673.00 and found that she had a total income of \$2,632.42. The Office subtracted appellant’s expenses of \$2,425.00 from this amount and found that her income exceeded her expenses by \$207.42 per month. The Office noted that the letter from the (Chapter 13) trustee was more than a year old and, thus, did not reveal her “current financial status.”

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *Id.* at § 8702(a).

<sup>7</sup> *Id.* at § 8702(b).

<sup>8</sup> *Id.* at § 8707.

optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>9</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 OPM upon discovery of the error.<sup>10</sup>

The Office's procedure manual provides:

"Basic life premiums are based on the annual 'base salary' of the claimant used to calculate disability compensation. The base salary should then be rounded up to the nearest \$1,000.00, and an additional \$2,000.00 added to that figure, to arrive at the claimant's annual salary for basic life insurance purposes."<sup>11</sup>

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

In this case, the Office failed to deduct premiums for basic life insurance from March 1, 2000 to April 17, 2004 and failed to deduct premiums for post-retirement basic life insurance from December 13, 2002 to April 17, 2004. The Board finds that this underdeduction constituted an overpayment of compensation.

The Office found that appellant received an overpayment of compensation in the amount of \$1,019.78, because it failed to deduct post-retirement basic life insurance from December 13, 2002 to April 17, 2004 and an overpayment in the amount of \$562.29, because it failed to deduct basic life insurance for the period March 1, 2000 to April 17, 2004. The Office further found that it had over deducted premiums for optional life insurance under Code Y of \$1,246.73, instead of making the correct deductions of \$1,005.09 under Code U. The Office offset the amount of the overpayment by the amount of its over deduction of optional life insurance to find a total overpayment of \$1,340.43. The Board has held, however, that such an offset circumvents established legal procedures and protections.<sup>12</sup> Such an offset practice precludes proper consideration of waiver of the entire amount of the overpayment and permits an unrestricted recovery of the offset portion of the overpayment without regard to the relevant factors set forth in 20 C.F.R. § 10.436. The Office's practice of offsetting an overpayment with the amount of any underpayment denies appellant administrative due process rights with respect to the amount offset.<sup>13</sup>

Additionally, it appears from an Office overpayment worksheet that it used appellant's base pay in thousands, \$34,000.00 as the basic insurance amount rather than her adjusted base pay of \$36,000.00. For basic life, the Office took appellant's base pay in thousands (34),

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<sup>9</sup> 5 U.S.C. § 8706(b).

<sup>10</sup> 5 U.S.C. § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8(a) (August 2004).

<sup>12</sup> *Diana L. Booth*, 52 ECAB 370 (2001); *Michael A. Grossman*, 51 ECAB 672 (2000).

<sup>13</sup> *Id.*

multiplied it by the premium rate per thousand effective from March 1, 2000 to December 31, 2002 (.155) and multiplied that by the number of days during the period divided by 14. The Office used the same formula to determine the amount it should have deducted for basic life premiums for the period January 1, 2003 to April 17, 2004 and for post-retirement basic life with no reduction from December 13 to 31, 2002 and January 1, 2003 to April 17, 2004. The Office's procedure manual, however, provides that basic life insurance premiums are based on appellant's base salary rounded up to the nearest \$1,000.00 with "an additional \$2,000.00 added to that figure, to arrive at the claimant's annual salary for basic life insurance purposes."<sup>14</sup> Appellant's rounded up base pay in thousands, \$34,000.00 should, therefore, have been increased by \$2,000.00 to \$36,000.00 prior to the Office's calculation of the amount of overpayment.

As the Office incorrectly offset part of the overpayment with an over deduction and as it used an inaccurate adjusted base pay in performing its overpayment calculations, the case will be remanded for recalculation of the amount of overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

To determine whether recovery of an overpayment from an individual who is without fault would defeat the purpose of the Act, the first test under section 8129(b), as specified in section 10.436, provides:

"(a) The 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) The beneficiary's assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents."<sup>15</sup>

Section 10.437 of the regulations covers the equity and good conscience standard and provides:

"(a) Recovery of an overpayment is considered against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

"(b) Recovery of an overpayment is also considered to be against equity and good conscience when any 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. In making such a decision, [the Office] does not consider the individual's current ability to repay the overpayment.

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<sup>14</sup> 5 C.F.R. § 870.202(a)(1)(i); Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8(a) (August 2004).

<sup>15</sup> 20 C.F.R. § 10.436.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worst, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits and that this decision resulted in a loss."<sup>16</sup>

The fact that a claimant was without fault in creating the overpayment does not necessarily preclude the Office from recovering all or part of the overpayment; the Office must exercise its discretion in determining whether waiver is warranted under either of these two standards.<sup>17</sup> The waiver of or refusal to waive an overpayment of compensation by the Office rests within its discretion pursuant to statutory guidelines.<sup>18</sup>

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

Following its preliminary determination that appellant was without fault in creation of the overpayment, the Office sought financial information and documentation to determine whether recovery of the overpayment would defeat the purpose of the Act. Appellant submitted an overpayment recovery questionnaire in which she listed her monthly income as \$2,504.00 and her monthly expenses as \$1,040.00 for housing, \$400.00 for food, \$100.00 for clothing, \$300.00 for utilities and \$675.00 for miscellaneous household expenses, for total monthly expenses of \$2,515.00. The Office determined that she received compensation checks of \$1,821.00 every 28 days which yielded a total monthly income of \$1,959.42. The Office added the \$1,959.42 to her monthly social security income of \$673.00 to find a total income of \$2,632.42. The Office subtracted appellant's total monthly expenses, which it found to be \$2,425.00 based on her overpayment recovery questionnaire, from her total monthly income of \$2,632.42 and determined that her income exceeded her expenses by \$207.42. The Board notes, however, that appellant's total monthly expenses according to the information provided on her overpayment recovery questionnaire are \$2,515.00 per month rather than \$2,425.00 per month. Her income thus, exceeds her expenses by \$117.42 per month rather than the \$207.42 found by the Office. Appellant, however, is not entitled to waiver as she does not need substantially all her income to meet current ordinary and necessary expenses.<sup>19</sup> Thus, recovery of the overpayment will not defeat the purpose of the Act.

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<sup>16</sup> 20 C.F.R. § 10.437.

<sup>17</sup> *Linda Hilton*, 52 ECAB 476 (2001).

<sup>18</sup> *Rudolph A. Geci*, 51 ECAB 423 (2000).

<sup>19</sup> 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (May 2004).

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.<sup>20</sup>

In this case, appellant has neither alleged, nor submitted evidence demonstrating that she relinquished a valuable right or changed her position for the worse in reliance on the excess compensation payments she received. Accordingly, the Board finds that the Office did not abuse its discretion in denying waiver of the overpayment in this case.

The Board notes that it does not have jurisdiction to review the Office's recovery of the overpayment. The Office determined that the overpayment should be recovered from money owed to appellant because it failed to include cost-of-living adjustments in her compensation payments beginning April 2004. The Board's jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation, but that the case is not in posture for determining the amount of overpayment. The Board further finds that the Office properly denied waiver of the overpayment.

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<sup>20</sup> 20 C.F.R. § 10.437.

<sup>21</sup> *Judith A. Cariddo*, 55 ECAB \_\_\_\_ (Docket No. 03-2270, issued February 24, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2004 is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision by the Board.

Issued: June 21, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member