

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

JAMES J. GARCIA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 04-972
Issued: March 2, 2005**

Appearances:
James J. Garcia, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 3, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 2, 2003 finding an overpayment of compensation. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this overpayment decision.

ISSUES

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$1,781.01 for the period January 26, 1991 through July 12, 2003 because basic life insurance premiums were not deducted from his compensation; (2) whether the Office abused its discretion in denying waiver of the overpayment; and (3) whether the Office properly required repayment of the overpayment by means of a lump-sum payment of \$1,781.01.

FACTUAL HISTORY

Appellant, a 57-year-old construction representative, filed a claim for benefits on February 24, 1990, alleging that he had developed a stress-related condition caused by factors of

his employment. The Office accepted the claim for major depression with phobic and panic symptoms.¹ Appellant has not worked since January 1991. He was placed on the periodic rolls.

On October 30, 2003 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$1,781.01 for the period January 26, 1991 through July 12, 2003 because basic life insurance premiums had not been deducted from his compensation. The Office found that appellant was without fault in the matter because he could not have been aware that the payments he had been receiving were incorrect. The Office advised appellant that if he disagreed with the fact or amount of the overpayment he could submit new evidence in support of his contention. The Office further advised appellant that, when he was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience. The Office informed appellant that he had the right to request a precoupment hearing on the matter of the overpayment and that any response he wished to make with regard to the overpayment should be submitted within 30 days of the October 30, 2003 letter. Appellant submitted a letter dated November 26, 2003 in which he requested waiver of overpayment and listed his monthly expenses and assets; the letter was received by the Office on December 2, 2003.

In a decision dated December 2, 2003, the Office finalized the preliminary determination regarding the overpayment of \$1,781.01. The Office stated that appellant had been advised by letter dated October 30, 2003 regarding the preliminary findings, but that appellant had not responded within 30 days. Therefore, the Office found that appellant was not entitled to waiver because appellant did not present information to support that repayment of the debt would result in financial hardship; appellant was requested to make repayment, by check, for the balance of the \$1,781.01 overpayment.

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 his duty.² 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.³

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.⁴ The coverage for basic life insurance is effective unless waived⁵ and the

¹ The Office initially denied the claim by decision dated August 10, 1990. By decision dated October 10, 1991, the Office accepted a condition of acute hip strain.

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ 5 U.S.C. § 8702(a).

⁵ 5 U.S.C. § 8702(b).

premiums for basic and optional life coverage are withheld from the employee's pay.⁶ 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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,781.01 for the period January 26, 1991 through July 12, 2003. The record shows that an overpayment occurred because basic life insurance premiums were not deducted from his compensation during this period. The Office calculated the amount of overpayment by taking the amount of basic life insurance which was supposed to have been deducted from his compensation every two weeks, \$12.21, between January 26, 1991 and January 9, 1993, and multiplying it times 26, the number of monthly pay periods during that period, which totaled \$317.46. The Office then took the monthly deduction for life insurance between January 10, 1993 and April 24, 1999, \$10.89, multiplied it times 82, the number of monthly pay periods during that period, which amounted to \$892.98; the monthly deduction for life insurance between April 25, 1999 and January 25, 2003, \$10.23, multiplied it times 49, the number of monthly pay periods during that period, which amounted to \$501.27; and the monthly deduction for life insurance between January 26 and July 12, 2003, \$9.90, multiplied it times 7, the number of monthly pay periods during that period, which amounted to \$69.30. These amounts were then totaled to arrive at a total overpayment of \$1,781.01.⁹ Based on this determination, the Office properly found that appellant received an overpayment of compensation in the stated amount during that period.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Act, 5 U.S.C. § 8129(b), 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.¹⁰ Waiver of overpayment is not possible if the individual is at fault in creating the overpayment.¹¹ The Office must determine whether recovery of the

⁶ 5 U.S.C. § 8707.

⁷ 5 U.S.C. § 8706(b).

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

⁹ The Office calculated the amount of bi-weekly deduction for life insurance based on appellant's yearly salary of \$30,783.00.

¹⁰ 5 U.S.C. § 8129(a)-(b).

¹¹ *Jorge O. Diaz*, 51 ECAB 124 (1999).

overpayment would defeat the purpose of the Act or would be against equity and good conscience.¹²

The applicable regulations provide that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office.¹³ Additionally, recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴

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 the repayment schedule, if necessary.

ANALYSIS -- ISSUE 2

In the instant case, the Board, having reviewed the case record, notes that on December 2, 2003, the date it issued its overpayment decision, the Office received a November 26, 2003 letter from appellant in which he requested waiver of the overpayment. The letter also contained a statement of expenses and assets. A review of the Office's December 2, 2003 decision shows the Office did not consider appellant's letter prior to issuing its finding that appellant was not entitled to waiver.

Since the Board's jurisdiction over a case is limited by 20 C.F.R. § 501.2(c) to reviewing the evidence that was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.¹⁵

As the Office did not review all the evidence that it received prior to the issuance of its December 2, 2003 decision regarding the issue of waiver, the Board will set aside that decision

¹² 20 C.F.R. § 10.434.

¹³ 20 C.F.R. § 10.436.

¹⁴ 20 C.F.R. § 10.437.

¹⁵ *Linda Johnson*, 45 ECAB 439 (1994); *see also William A. Couch*, 41 ECAB 548 (1990).

and remand the case to the Office for a decision considering appellant's request for waiver of the overpayment.¹⁶

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$1,781.01 for the period January 26, 1991 through July 12, 2003 because basic life insurance premiums were not deducted from his compensation. The Board finds that the case must be remanded to the Office for consideration of whether appellant is entitled to waiver of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part for further action consistent with this decision of the Board.

Issued: March 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁶ As the Board has remanded the case for the Office to reconsider the issue of whether appellant is entitled to waiver, it need not consider that issue, nor the issue of whether the Office properly required repayment by means of lump-sum repayment.