

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

GARY WAYNE LEE, Appellant

and

**U.S. POSTAL SERVICE, EDMOND POST
OFFICE, Edmond, OK, Employer**

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**Docket No. 04-1717
Issued: March 7, 2003**

Appearances:
Gary Wayne Lee, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 28, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 26, 2004, finding an overpayment of compensation in the amount of \$1,548.82 as basic life insurance premiums were not deducted from his continuing compensation payments for the period March 28, 1994 to October 4, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the over payment issue.

ISSUES

The issues are: (1) whether the Office properly found an overpayment of compensation in the amount of \$1,548.82 as basic life insurance premiums were not withheld from his continuing compensation payments for the period March 28, 1994 to October 4, 2003; (2) whether the Office properly denied waiver; and (3) whether the Office properly required recovery of the overpayment by deducting \$100.00 every four weeks from appellant's continuing compensation payments. On appeal, appellant asserts that he was not at fault in creation of the overpayment and that its recovery would cause financial hardship for his family.

FACTUAL HISTORY

The Office accepted that on January 31, 1994 appellant, then a 44-year-old part-time flexible distribution clerk, sustained a lumbosacral strain and aggravation of degenerative lumbar disc disease at L5-S1 when he lifted a bundle of mail. He stopped work that day and did not return.¹ He received wage-loss compensation for total disability commencing March 28, 1994. Appellant voluntarily resigned from the employing establishment on June 24, 1994.

In a July 13, 1994 form, the employing establishment noted that appellant was enrolled in the basic and optional life insurance (OLI) programs as of January 7, 1994 and continuing. However, computer logs indicate that, for the period March 28, 1994 to October 4, 2003, the Office deducted OLI premiums from appellant's compensation but did not deduct basic life insurance premiums.

A February 18, 2004 worksheet showed that, as of March 28, 1994, appellant's "OLI annual salary" was \$34,461.00. The Office calculated that, from March 28 to April 24, 1999, the basic life insurance premium deduction per pay period should have been \$12.21, multiplied by 69 pay periods equaled \$842.49. From April 25, 1999 to January 25, 2003, the deduction for basic life should have been \$11.47 for 49 pay periods, equaling \$562.03. From January 26 to October 4, 2003, the premium was \$11.10 for each of 13 pay periods, equaling \$144.30. The Office added these three amounts to equal \$1,548.82.

By notice dated February 26, 2004, the Office advised appellant of its preliminary determination that an overpayment of compensation in the amount of \$1,548.82 had occurred in his case as basic life insurance premiums were not withheld from his compensation for the period March 28, 1994 to October 4, 2003. The Office found that appellant was not at fault in creation of the overpayment. Appellant requested waiver of the overpayment and provided information about his income, expenses and assets. He listed his wife as a dependent and noted a monthly income of \$2,333.74. Appellant listed \$2,227.11 in monthly expenses: \$400.00 for food; \$60.00 for clothing; \$316.75 for utilities;² \$456.00 in automotive and miscellaneous expenses³ and \$994.36 in consumer debt and medical bill repayments. He also noted \$21.81 in

¹ Appellant submitted affidavits of earnings and employment (Form EN1032) dated from August 9, 1995 to August 8, 2003, indicating that he did not perform remunerated or volunteer work at any time following the January 31, 1994 injury. In a December 20, 2000 letter, postal inspector Thomas V. Curto alleged that appellant failed to report for "four nonpaid volunteer employment positions" on EN1032 forms dated August 9, 1995, August 10, 1996, August 16, 1997, August 5, 1998, August 31 and November 6, 1999 and August 14, 2000. Appellant resigned from three of the positions but served as Emergency Management Director for the city of Coalgate, Oklahoma from October 31, 1995 onward. Appellant also served as a Councilman-at-Large for the city of Coalgate from August 29, 1995 through May 1, 2000.

² Appellant noted the following utility expenses: \$75.91 for electricity; \$65.94 for natural gas; \$97.34 for Cingular cellular telephone service, \$18.56 for sanitation; \$30.76 telephone; \$28.25 for water.

³ Appellant noted the following miscellaneous expenses: \$123.00 for medical copayments; \$14.00 for medical supplies; \$104.45 for cigarettes; \$60.00 for home repairs; \$30.00 for automotive repairs; \$80.00 for gasoline.

assets, including cash on hand and bank account balances. Appellant asserted that he was not at fault as his benefit statements indicated deductions for life insurance premiums.⁴

By decision dated April 26, 2004, the Office finalized the February 26, 2004 notice, finding that an overpayment of \$1,548.82 had occurred in appellant's case as basic life insurance premiums were not withheld from his continuing compensation payments for the period March 28, 1994 to April 24, 1999. The Office further found that appellant was without fault in creation of the overpayment. The Office noted reviewing appellant's request for waiver and his financial information and found that appellant had "sufficient income" such that "recovery of the overpayment would not cause undue hardship." The Office directed recovery of the overpayment by deducting \$100.00 every four weeks from appellant's continuing compensation payments from April 17, 2004 to May 14, 2005, with a final payment on June 11, 2005 in the amount of \$57.55.

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.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulation leave original prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

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.⁷ The coverage for basic life insurance is effective unless waived⁸ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁹ 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 OLI coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.¹⁰ When an under withholding of life insurance premiums occurs,

⁴ Appellant submitted wage-loss benefits statements for intermittent periods from November 13, 1994 to April 20, 2002, showing deductions for "life insurance." For the period November 13 to December 30, 1994, the deduction was \$2.10 every four weeks. For the period March 5 to April 7, 1995, the deduction was \$2.20 every four weeks. From March 26, 2000 to April 20, 2002, the deduction was \$2.80 every four weeks.

⁵ 5 U.S.C. § 8102(a).

⁶ 5 U.S.C. § 8129(a).

⁷ 5 U.S.C. § 8702(a).

⁸ 5 U.S.C. § 8702(b).

⁹ 5 U.S.C. § 8707.

¹⁰ 5 U.S.C. § 8706(b).

the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to Office of Personal Management upon discovery of the error.¹¹

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on January 31, 1994 and received compensation for his disability. However, the Office deducted no premiums from his compensation for basic life or postretirement basic life coverage for the period March 28, 1994 to October 4, 2003. 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 on March 28, 1994. The Board will affirm the Office's April 26, 2004 decision on the issue of fact of overpayment.¹²

The record contains a February 18, 2004 overpayment worksheet. For basic life, the Office found that it should have deducted \$12.21 from appellant's continuing compensation payments for the period March 28, 1994 to April 24, 1999.¹³ The Office then multiplied the \$12.21 by 69, the number of pay periods encompassed, for a result of \$842.49. Using the same formula, the Office calculated that it should have deducted \$562.03 for basic life coverage from April 25, 1999 to January 25, 2003, \$11.47 multiplied by 49 pay periods. The Office then calculated that, from January 26 to October 4, 2003, \$11.10 should have been deducted for each of 13 pay periods, equaling \$144.30. Thus, the overpayment resulting from the Office's error amounted to \$1,548.82. The Board will affirm the April 26, 2004 decision on the amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹⁴ If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless (1) adjustment or recovery of the overpayment would defeat the purpose of the Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹⁵

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: (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

¹¹ 5 U.S.C. § 8707(d); see *Kenneth H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004).

¹² The overpayment that arose in this case is unrelated to premiums for optional additional insurance, which appear to have been properly deducted.

¹³ 5 U.S.C. § 8707(d).

¹⁴ 20 C.F.R. § 10.433(a).

¹⁵ 20 C.F.R. § 10.434.

furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹

ANALYSIS -- ISSUE 2

The Office properly found that appellant was without fault in the matter of the overpayment. However, the Board notes that repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. Appellant reported a monthly income of \$2,333.74, with monthly expenses of \$2,227.11, a difference of \$106.63. The Office accepted the financial disclosures appellant made²⁰ and found that he did not need substantially all of his current income (including compensation benefits) to meet current ordinary and necessary living expenses.²¹ The Office found appellant able to repay the debt. The Office therefore concluded that recovery of the overpayment would not cause hardship to appellant or defeat the purpose of the Act.

Also, appellant made no argument that he gave up a valuable right or changed his position for the worse in reliance on the overpaid compensation. Recovery of the overpayment is not considered to be against equity and good conscience. The Board finds that the Office properly denied waiver of the overpayment and is required by law to recover the debt by decreasing later payments to which appellant is entitled.²²

¹⁶ 20 C.F.R. § 10.436.

¹⁷ 20 C.F.R. § 10.437(a).

¹⁸ 20 C.F.R. § 10.437(b).

¹⁹ 20 C.F.R. § 10.438.

²⁰ The Board notes that among the expenses accepted by the Office are \$104.45 for cigarettes and \$97.34 for cellular telephone service.

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1) (FECA Tr. 05-01, November 2004).

²² See *supra* note 6.

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to the Office the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If 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.²³

ANALYSIS -- ISSUE 3

Appellant's monthly income exceeded monthly expenses by \$106.63. Taking these factors into account, the Office determined that he could repay the debt at \$100.00 per month. It may be impossible to eliminate all financial hardship given appellant's reported income and monthly expenses. However, section 10.441(a) does not require the elimination of financial hardship.²⁴ The Office is required to take into account certain factors "so as to minimize any hardship." The Board finds that the Office gave due regard to the relevant factors noted above and did not abuse its discretion in setting the rate of recovery. The Board will affirm the Office's April 26, 2004 decision on the issue of the rate of recovery.

CONCLUSION

The Board finds that the Office properly found that an overpayment of compensation in the amount of \$1,548.82 was created in appellant's case as basic life insurance premiums were not deducted from his continuing compensation payments for the period March 28, 1994 October 4, 2003. The Board further finds that the Office properly denied waiver of the overpayment. The Board further finds that the Office did not abuse its discretion by setting the rate of recovery from continuing compensation at \$100.00 every four weeks.

²³ 20 C.F.R. § 10.441(a).

²⁴ *Larry E. Richardson*, (Docket No. 03-1065, issued April 27, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 26, 2004 is affirmed.

Issued: March 7, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member