

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

REBECCA F. REED, Appellant)	
)	
and)	Docket No. 04-2011
)	Issued: March 3, 2005
U.S. POSTAL SERVICE, NORTHEAST)	
STATION, Tulsa, OK, Employer)	
)	

Appearances:
Rebecca F. Reed, 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 August 11, 2004 appellant filed a timely appeal from the May 12, 2004 merit decision of the Office of Workers' Compensation Programs, which found an overpayment of compensation and denied waiver. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUES

The issues are: (1) whether appellant received an overpayment of \$1,533.60 from September 12, 1990 to October 4, 2003; (2) whether the Office properly denied waiver; and (3) whether the Office properly set the rate of recovery from continuing compensation.

FACTUAL HISTORY

On January 20, 1990 appellant, then a 39-year-old letter carrier, sustained an injury in the performance of duty when she slipped off some steps, twisted trying to catch herself but did not fall. On April 12, 1991 she sustained another injury in the performance of duty when she slipped

and fell on a tile floor. The Office accepted her claims and paid compensation for wage loss on the periodic rolls.

On February 23, 2004 the Office made a preliminary finding that appellant received an overpayment of \$1,533.60 because it failed to deduct the premiums for her basic life insurance from September 12, 1990 through October 4, 2003. The Office also made a preliminary finding that she was not at fault in the matter. The Office asked appellant to complete and return an enclosed overpayment recovery questionnaire together with supporting documents, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and other records, to support the income and expenses shown on the questionnaire:

“This information will help us decide whether or not to waive the overpayment. If waiver is not granted, the information will be used to decide how to collect the overpayment. We will not try to collect the overpayment until we reach a final decision on your request for waiver.

“Also please note that, under 20 C.F.R. § 10.438, we will deny waiver if you fail to furnish the information requested on the enclosed Form OWCP-20 (or other information we need to address a request for waiver) within 30 days. We will not consider any further request for waiver until the requested information is furnished.”

Appellant replied on March 12, 2004. She stated that the dates given for the overpayment were incorrect, as she worked various light-duty jobs until her first surgery in September 1992. She submitted pay stubs and a benefits statement showing that life insurance premiums were being withheld. She also questioned whether she owed the premiums: “Second, as I seem to recall -- I could be wrong about this -- but I thought that the basic life insurance premiums were paid by the USPS for employees. Am I no longer considered an employee?” To support her request for waiver, she submitted bankruptcy documents itemizing her current monthly income and expenses.

In a decision dated May 12, 2004, the Office finalized its preliminary findings. The Office found that appellant received an overpayment of \$1,533.60 from September 12, 1990 through October 4, 2003 because, due to an administrative oversight, basic life insurance premiums were not deducted from her compensation payments. The Office showed its calculations by listing the premiums that should have been deducted for each pay period and the number of pay periods involved. The Office found that appellant was not at fault in the matter of the overpayment and further found that the circumstances of her case did not warrant waiver:

“While the claimant did request a waiver of the overpayment the Office is denying that on the fact the federal employees are not eligible for optional life insurance without the basic coverage. Although she brought up the fact that basic life insurance is paid for by the employing agency, it has no bearing on her case as her date of injury falls after 1990 when basic life insurance ceased to be free to the employee.

“Since the claimant failed to complete and return the Form OWCP-20 detailing her current financial obligations, the Office is taking a conservative approach with regards to the repayment and setting 28-day payment at \$50.00 per month to ensure repayment in a period not to exceed three years.”

On appeal, appellant notes that the bankruptcy papers she submitted provided basically the same information as the OWCP-20 form requested, with the exception of money on hand. She submitted a completed OWCP-20, dated March 12, 2004, and asked the Board to reconsider the issue of waiver.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance Program (FEGLI),¹ most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options. The coverage for basic life insurance is effective unless waived and the premiums for basic and optional life coverage are withheld from the employee's pay. 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. 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 (OPM) upon discovery of the error.²

If the claimant is determined to be without fault, the Office must release a letter, along with an overpayment recovery questionnaire, within 30 days of the date the overpayment is identified. This letter advises the claimant of the fact and amount of the overpayment and of the preliminary finding that the claimant is without fault in the creation of the overpayment. Office procedures state: “The reason that the overpayment occurred must be clearly stated in the preliminary decision and the [Office] should provide a clearly written explanation indicating how the overpayment was calculated.”³

ANALYSIS -- ISSUE 1

The Office found that appellant received an overpayment of compensation as a result of an underwithholding of premiums for basic life insurance coverage. The Office presumed that coverage was effective in this case, as coverage for basic life insurance is effective unless

¹ The law governing life insurance for federal employees is found at 5 U.S.C. §§ 8701-8716.

² *Keith H. Mapes*, 56 ECAB ___ (Docket No. 03-1747, issued October 20, 2004). An underwithholding of premiums results in a two-tiered liability: The claimant owes the agency the underwithheld funds, and similarly the agency owes the insurance fund/OPM. If this occurs, the Office must make OPM whole and remit the entire amount of the underwithholding, even if the debt is eventually waived. Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.11.b(2) (August 2004).

³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4.a (May 2004).

waived. And indeed, U.S. Postal Service employees are automatically enrolled in basic life insurance unless they waive the coverage or are ineligible.⁴ Compensation logs throughout the case record document that the Office withheld no premiums for Basic life insurance during periods from September 12, 1990 through October 4, 2003.⁵ As it appears that appellant received more compensation than she was entitled to, the Board will affirm the Office's May 12, 2004 decision on the issue of fact of overpayment.

The Board finds, however, that the Office did not follow its procedures when it released the February 23, 2004 letter notifying appellant of its preliminary findings. Specifically, the Office did not "provide a clearly written explanation indicating how the overpayment was calculated." The February 23, 2004 letter merely informed her that she was overpaid \$1,533.60 because the Office failed to deduct premiums for her basic life insurance from September 12, 1990 through October 4, 2003. The Office offered her no explanation how it arrived at this figure. The record does contain an internal worksheet showing some calculations, but there is no indication that the Office released this worksheet with the February 23, 2004 letter, and if it had, there is little about the worksheet that explains where the Office got its numbers.⁶ Because the Office failed to follow proper procedures and denied appellant an effective opportunity to present relevant evidence and argument on the amount of the overpayment before issuing a final decision on the matter, the Board will set aside the Office's May 12, 2004 decision on the issue of amount and remand the case for a new and proper preliminary determination.⁷

CONCLUSION

Appellant received an overpayment of compensation as a result of an underwithholding of premiums for basic life insurance coverage, but the case is not in posture for decision on the amount of this overpayment. The Office must issue a preliminary determination clearly explaining how it calculated the amount. As this new preliminary determination will allow appellant to request waiver and present financial information in support thereof, the Board need not address on this appeal whether the Office properly denied waiver or set the rate of recovery from continuing compensation.

⁴ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8.a(1) (August 2004). In these cases the Office should review the record and make a finding on whether coverage was effective during the period of the overpayment. Noting that the employing establishment determines the claimant's eligibility for life insurance, the Office might find, for example, that Box 27 of Form CA-7 indicated coverage, as it did in this case, that the record showed coverage continuing under compensation status and that the claimant completed no life insurance election (SF 2817) waiving or canceling basic life. *See id.*, Chapter 5.0401.5.

⁵ Whether the Office withheld premiums for optional life insurance is immaterial, as the overpayment arose from an underwithholding of premiums for basic life.

⁶ The worksheet identifies no biweekly premium rate per thousand for any of the periods in question, does not explain how appellant's basic pay for compensation purposes was adjusted to determine the basic insurance amount for Basic life insurance purposes, mistakenly multiplies 28-day premiums by "pp" or "pay periods" and does not document the compensation checks at issue.

⁷ *Vincent E. Washington*, 42 ECAB 636, 640 (1991); *Sandra K. Neil*, 40 ECAB 924, 927 (1989).

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed on the issue of fact of overpayment and is otherwise set aside. The case is remanded for further action consistent with this opinion.

Issued: March 3, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member