

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

LAWRENCE E. DELOACH, Appellant)	
)	
and)	Docket No. 04-2279
)	Issued: March 15, 2004
DEPARTMENT OF THE TREASURY,)	
CUSTOMS SERVICE, Little Rock, AR,)	
Employer)	
)	

Appearances:
Lawrence E. Deloach, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 20, 2004 appellant filed a timely appeal of a September 7, 2004 merit decision of the Office of Workers' Compensation Programs that found he received an overpayment of compensation in the amount of \$3,064.30, that occurred because the Office failed to deduct basic life insurance premiums from November 23, 1991 through September 6, 2003 and further found that waiver of the overpayment was not warranted. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this overpayment case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,064.30 that occurred because premiums for basic life insurance were not deducted from his compensation payments from November 23, 1991 through September 6, 2003; and (2) whether the Office properly refused to waive recovery of this overpayment.

FACTUAL HISTORY

This case was before the Board last year on the issue of an overpayment of compensation related to the Office's failure to deduct basic life insurance premiums. In a May 19, 2004 decision and order, the Board found that appellant was not entitled to continuation of basic life insurance at no cost to him, there was an overpayment of compensation, but that the Office had not provided sufficient information to determine whether the amount of the overpayment was correct. The Board noted that, as the Office did not show the source of the amounts of the premiums, it was unable to ascertain whether the amounts listed by the Office in its computation were correct. The Board further noted that the record indicated that appellant used periods of paid leave until August 22, 1992, that premiums for life insurance were deducted until that date and that the amount of the overpayment calculated by the Office was therefore incorrect. The Board remanded the case to the Office for "recalculation of the amount of the overpayment and for the inclusion of a reference to the tables or other source which was the basis of the amounts the Office determined should have been collected as premiums for basic life insurance."¹

On June 30, 2004 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$2,974.76, that occurred because it failed to deduct premiums for basic life insurance from his compensation payments from November 23, 1991 through September 6, 2003. The Office also preliminarily found that appellant was without fault in the creation of the overpayment and requested that he submit financial information if he believed recovery of the overpayment should be waived. In a July 6, 2004 letter, appellant contended that the June 30, 2004 preliminary determination did not comply with the Board's decision, that too much was withheld for health insurance premiums for the same period and that credit for this over withholding should satisfy his debt. In a July 22, 2004 letter, appellant requested waiver on the basis that recovery would be against equity and good conscience, stating that he relinquished a valuable right, namely that the Office's refusal to authorize treatment for some of his medical conditions required him to forgo medical treatment. In a July 29, 2004 letter, the Office advised appellant that from November 23, 1991 to January 9, 1993, it calculated the amount that should have been deducted for basic life insurance premiums by multiplying the amount of his coverage, \$62,000.00, by the percentage rate, 0.185, times twice per month, which equaled \$22.94 times 15 pay periods, which equaled \$344.10. The Office then noted that basic life insurance premiums of \$9.62 per two-week pay period were deducted from the wages he received for the five pay periods ending June 13 and 27, July 11 and 25 and August 22, 1992 for a total of \$48.10 and that this amount was deducted from the previously determined overpayment amount of \$3,112.40 for a revised overpayment amount of \$3,064.30. The Office stated that a corrected preliminary finding would be issued.

On July 30, 2004 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$3,064.30, that occurred because it failed to deduct premiums for basic life insurance from his compensation payments from November 23, 1991 through September 6, 2003. The Office also preliminarily found that appellant was without fault in the creation of the overpayment and requested that he submit financial information if he

¹ Docket No. 04-520 (issued May 19, 2004).

believed recovery of the overpayment should be waived. The Office stated that this determination superceded the Office's June 30, 2004 preliminary determination.

By letter dated August 4, 2004, appellant stated that his annual rate of pay never equaled or exceeded \$50,000.00, contended that health insurance premiums were over withheld in an amount greater than his overpayment and requested waiver on the basis that recovery would be against equity and good conscience, stating that he relinquished a valuable right, namely that the Office's refusal to authorize treatment for some of his medical conditions, which were later accepted, required him to forgo or pay for medical treatment for these conditions.

By decision dated September 7, 2004, the Office found that appellant received an overpayment of compensation in the amount of \$3,064.30 that occurred because it failed to deduct premiums for basic life insurance from his compensation payments from November 23, 1991 through September 6, 2003. The Office also found that appellant was without fault in the creation of the overpayment but that waiver was not warranted since appellant did not submit financial information.

LEGAL PRECEDENT

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.² The coverage for basic life insurance is effective unless waived³ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁴ While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.⁵ 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.⁶ Premiums for basic life insurance are based on the employee's annual base salary used to calculate compensation for disability, rounded up to the nearest \$1,000.00, plus an additional \$2,000.00.⁷ 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

² 5 U.S.C. § 8702(a).

³ 5 U.S.C. § 8702(b).

⁴ 5 U.S.C. § 8707.

⁵ 5 U.S.C. § 8707(b)(1).

⁶ 5 U.S.C. § 8706(b).

⁷ 5 U.S.C. §§ 8101(c), 8107(c); Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.8a (August 2004).

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

ANALYSIS

On the prior appeal, the Board, by decision and order dated May 19, 2004, found that appellant received an overpayment of compensation because basic life insurance premiums were not deducted from his compensation payments from November 23, 1991 to September 6, 2003, but noted that premiums were paid until August 22, 1992. Pursuant to the Board's remand, the Office ascertained that premiums for basic life insurance had been deducted by the employing establishment for paid leave for the pay periods ending June 13 and 27, July 11 and 25 and August 22, 1992. This is shown by the employing establishment's October 8, 1992 account of leave used by appellant and is consistent with appellant's listing of when leave without pay was used. As \$9.62 was withheld from appellant's paid leave for each of these five pay periods, the Office correctly deducted \$48.10 from the previously calculated amount of the overpayment, \$3,112.40.

The Board finds, however, that the previously calculated amount of the overpayment was incorrect. The Office's worksheet in calculating the original overpayment of \$3,112.40 shows that the calculations were based on an annual salary of \$59,129.00. Appellant's pay records show that on August 22, 1992 the end of the last pay period in which appellant was paid by the employing establishment, his annual salary was \$49,290.00. Rounding this salary up to the nearest \$1,000.00 and adding \$2,000.00 results in an amount of \$52,000.00 that should be used to calculate his life insurance premiums. Multiplying this amount by 0.185, the biweekly rate in effect until January 10, 1993,⁹ results in a biweekly premium of \$9.62, the exact amount the employing establishment was deducting for basic life insurance premiums. Compensation is paid in four-week, rather than biweekly payments, which means that two times \$9.62 or \$19.24, should have been deducted from appellant's periodic compensation payments from November 23, 1991 to January 9, 1993. The Office instead calculated that it should have deducted \$22.94 from each of these four-week compensation payments. The Office's calculations of the amounts that should have been deducted for premiums for the subsequent periods through September 6, 2003 are based on the same incorrect rate of pay. This has resulted in an incorrect amount of overpayment.

Regarding appellant's contention that the overpayment of compensation should be offset by an over withholding of health benefits premiums, the Board notes that such an offset can only work to appellant's detriment. If additional amounts are owed to appellant, they should be paid by the Office and appellant could still have the entire amount of the overpayment waived, which could not occur if an offset were applied. Moreover, the Board has disapproved such an offset, stating this practice denies administrative due process with respect to the amounts offset.¹⁰

CONCLUSION

The Board finds that the case must be remanded to the Office for recalculation of the amount of appellant's overpayment consistent with this decision of the Board. The Office

⁹ These rates are published in the *Federal Register* and are also in the Office's procedure manual, at Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401, Exhibit 2 (August 2004).

¹⁰ *Michael A. Grossman*, 51 ECAB 673 (2000).

should issue a new preliminary determination regarding the overpayment, providing a clear explanation of how the overpayment was calculated¹¹ and giving appellant an opportunity to submit financial information to allow the Office to determine whether recovery of the overpayment of compensation should be waived.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.¹²

Issued: March 15, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ This explanation of how the overpayment was calculated is required by Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (May 2004).

¹² As the Office will be issuing a new preliminary determination of overpayment, the issue of whether recovery of the overpayment of compensation should be waived is not ripe for decision by the Board on the present appeal.