

FACTUAL HISTORY

The Office accepted that on June 1, 2001 appellant, then a 43-year-old part-time flexible letter carrier, was assaulted while delivering mail and sustained back injury resulting in an L4-5 disc rupture. He thereafter underwent a lumbar laminectomy and discectomy at L4-5 and was referred for vocational rehabilitation. The Office accepted appellant's claim for a herniated disc and "status post L4-5 discectomy" and he received appropriate compensation and medical benefits.

On December 7, 2001 appellant was notified of his compensation benefits and how they would be computed.¹

On June 4, 2003 appellant advised the Office that it had not been deducting health insurance benefits from his compensation payments. The Office investigated the matter and calculated that, for the period June 30 to July 14, 2001, it had not withheld \$86.69; for the period July 15, 2001 to January 26, 2002 it had not withheld \$1,132.74; for the period January 27, 2002 to January 25, 2003 it had not withheld \$2,465.58; and for the period January 26 to June 14, 2003 it had not withheld \$1,052.20. This totaled \$4,737.21 in health care premiums that were not withheld.

On September 11, 2003 the Office issued a preliminary determination indicating that appellant had been overpaid in the amount of \$4,737.21, which occurred because health benefits insurance premiums were not deducted from his compensation for the period June 30, 2001 to June 14, 2003. He submitted an overpayment recovery questionnaire noting his monthly income as \$3,150.00 and assets totaled \$1,545.00 and he detailed his monthly expenses as amounting to \$2,800.00.

By decision dated October 29, 2003, the Office finalized its preliminary determination finding that appellant had received an overpayment of compensation in the amount of \$4,737.21, for which he was not at fault, but that he was not entitled to waiver of recovery of the overpayment. The Office directed that recovery would be made from continuing compensation at the rate of \$163.00 each four weeks.

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. 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.²

¹ The December 7, 2001 letter stated that \$0.00 was being deducted for health benefits.

² 5 U.S.C. § 8129.

The regulations of the Office of Personnel Management (OPM), which administers the Federal Employee Health Benefits (FEHB) Program, provides guidelines for the registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant’s share of the cost of enrollment for every pay period during which the enrollment continues.... An employee or annuitant incurs an indebtedness due to the United States in the amount of the proper employee withholding required for each pay period that health benefits withholdings or direct premium payments are not made but during which the enrollment continues.”

In addition, 5 C.F.R. § 890.502(c)(1) provides:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of title 5, United States Code, to OPM for deposit in the Employees Health Benefits Fund.”

ANALYSIS -- ISSUE 1

In this case, the overpayment occurred because appellant’s health benefit deductions were not being subtracted from his continuing compensation commencing in 2001. By letter dated December 7, 2001, appellant was advised that he would receive compensation under the conditions set forth in the letter. The letter indicated that no health benefits premiums had been withheld, but noted that, for the period September 22 to November 3, 2001, appellant was entitled to a gross amount of \$1,834.32, minus premiums for optional life insurance of \$27.04 and basic life insurance premiums of \$14.28, for a net amount of \$1,793.00. He was, therefore, paid compensation for the period September 22 to December 1, 2001 without any deductions for health benefits premiums. Based on the evidence of record, the Board finds that appellant did, in fact, receive an overpayment totaling \$4,737.21, because premiums for health benefits were not subtracted from his compensation benefits as reflected on the daily rolls payment sheet and computer print outs of record.

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. 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.³

³ 20 C.F.R. § 10.434.

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 furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.⁴ 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.⁵ 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.⁶

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.⁷

ANALYSIS -- ISSUE 2

Although the Office found that appellant was without fault in the matter of the overpayment, 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's reported monthly income of \$3,150.00 exceeds his monthly expenses by \$350.00, substantially more than the \$50.00 provided for in the regulations. This means that he does not need substantially all of his current income to meet current ordinary and necessary living expenses. The Office properly concluded that recovery of the overpayment would not cause hardship to appellant or defeat the purpose of the Act.⁸

Further, as it appears that appellant would not experience severe financial hardship in attempting to repay the debt and he 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.

⁴ 20 C.F.R. § 10.436.

⁵ 20 C.F.R. § 10.437(a).

⁶ 20 C.F.R. §10.437(b).

⁷ 20 C.F.R. §10.438(a).

⁸ On appeal, appellant has proffered allegations concerning changes and reductions of his reported income. This aspect of the case has not been considered by the Office and, therefore, cannot be considered by the Board.

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.⁹

The method by which the Office may recover overpayments is defined by regulation. The applicable regulation, 20 C.F.R. § 10.441(a), provides as follows:

“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.”

ANALYSIS -- ISSUE 3

In this case, according to the overpayment recovery questionnaire, appellant's monthly income exceeds his expenses by approximately \$350.00 a month. The Board, therefore, finds that the Office's determination that the overpayment would be recovered by withholding \$163.00 from his continuing compensation benefits is not unreasonable as appellant is left with \$187.00 in excess income after such withholding and as it is a rate at which the overpayment will be recovered within the least amount of time without causing undue hardship on appellant.

CONCLUSION

The Board finds that the Office properly determined that a \$4,737.21 overpayment was created in this case and that it was not subject to waiver.

⁹ 20 C.F.R. § 10.441(a) (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 29, 2003 be and hereby is affirmed.

Issued: May 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member