

FACTUAL HISTORY

On September 7, 1988 appellant, then a 52-year-old carpenter, fell to the floor and landed on his hands and knees, twisting his right ankle and knee in the performance of duty. The Office accepted his claim for a right medial meniscus tear and surgery, lumbosacral sprain, aggravation of a lumbosacral strain. He received appropriate compensation, which commenced prior to December 31, 1989.

A Federal Employees' Group Life Insurance (FEGLI) Program election form dated July 20, 2002, indicated that appellant had elected to freeze all of his Option B -- additional life insurance at the value as of age 65. The form also contained a notice advising that appellant could cancel or reduce, but not increase, the number of elections at any time, but that no premiums would be refunded. The record does not indicate if the Office advised appellant of the effective date of this change.

By letter dated September 6, 2002, appellant and his wife advised the Office that, while life insurance deductions in the amount of \$92.80 were taken out of the August statement for the period July 14 to August 10, 2002, no life insurance deductions were taken from the September statement, which ran for the period August 11 to September 7, 2002.

In a memorandum dated December 23, 2003, the Office explained that action was taken based on appellant's election to freeze his Option B life insurance. The Office explained that the information was input effectively for the December 28, 2003 to January 24, 2004 cycle¹ in the amount of \$82.36 for 2x multiples of appellant's salary. The Office also advised that an error had been made inputting the premiums for the period November 30 to December 27, 2003 as a retirement premium and that the amount needed to be deducted and correctly placed with the premiums collected for the Option B freeze.

A subsequent review by the Office showed that no premiums were deducted for the period August 11, 2002 to November 29, 2003. The Office determined that this was the equivalent of 476-calendar days and that the premium at the rate of .71 multiplied by appellant's Option B insurance coverage in the amount of \$58,000.00 equated to a biweekly premium of \$41.18. The 476-calendar days were divided by 14, or 34 pay periods. The 34 pay periods were multiplied by the biweekly premium of \$41.18, to total \$1,400.1199 rounded up to \$1,400.12. The Office determined that appellant received an overpayment in this amount, due to the nondeduction of the life insurance premiums.

On December 23, 2003 the Office made a preliminary finding that an overpayment of \$1,400.12 arose because appellant elected to freeze his Option B life insurance coverage on July 20, 2002 and it did not initiate a change in his compensation benefits until November 30, 2003. The Office advised appellant that no premiums were deducted from his compensation benefits from August 11, 2002 to November 29, 2003. It determined that he was at fault in creating of the overpayment based on his failure to follow up after sending the September 6, 2002 letter, which indicated that no deductions were made as of August 11, 2002

¹ The memorandum states January 24, 2003, but this appears to be a typographical error.

and which continued for over a year. Appellant was informed of his right to challenge the amount of the overpayment or request a waiver of the overpayment. If appellant wished a waiver of the overpayment, he was directed to submit financial information by completing an overpayment recovery questionnaire. Appellant did not respond.

In a decision dated August 4, 2004, the Office finalized the overpayment as to fact and amount. The Office found that appellant was with fault because he was aware that the premiums were not being deducted from his continuing compensation payments. The Office noted that no response was received from appellant in response to the letter of December 23, 2003, he did not request a prerecoument hearing, nor complete an overpayment questionnaire or provide any other financial information. The Office determined that \$82.36 would be withheld from appellant's continuing compensation every 28 days until the overpayment was refunded.

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 FEGLI program, 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 premiums for basic and optional life coverage are withheld from the employee's pay.⁶ At separation from the employing establishment, the FEGLI program will either terminate or be continued under "compensationeer" status. Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁷ however, the employee is responsible for payment of premiums for optional insurance coverage and coverage without reduction, which is accomplished by authorizing withholdings from his compensation.⁸ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an

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).

⁶ 5 U.S.C. § 8707.

⁷ 5 U.S.C. § 8707(b)(2).

⁸ 5 U.S.C. § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022, 1024 (1992) (the Board found that the claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

overpayment of compensation because the Office must pay the full premium to the Office of Personnel Management upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

The record establishes that on July 20, 2002 appellant selected Option B under the FEGLI program, which froze his additional life insurance as of age 65. Although he authorized deductions, the Office did not deduct any of the Option B life insurance premiums from appellant's compensation benefits during the period August 11, 2002 to November 29, 2003. On December 23, 2003 the Office discovered the error, which created an overpayment of compensation. The Office should have deducted premiums for the additional life insurance for the period from August 11, 2002 to November 29, 2003. The Board will affirm the Office's August 4, 2004 decision on the fact of overpayment. However, the amount of overpayment is in question.

Appellant sustained an injury in the performance of duty on September 7, 1988 and received compensation for his disability. Because appellant began receiving compensation payments prior to December 31, 1989, federal regulations provided that his basic insurance coverage be continued without cost.¹⁰ However, appellant was responsible for the additional cost associated with his election for a basic policy with no reduction. Although appellant had elected to freeze all of his Option B additional life insurance at the value at the age of 65, as noted above, the Office did not deduct any of the Option B life insurance premiums from appellant's compensation benefits during the period from August 11, 2002 to November 29, 2003. The Office should have only deducted premiums for the difference between the additional life insurance coverage, instead of the whole amount.

The Board notes that the period August 11, 2002 to November 29, 2003 equates to 476-calendar days. The Office utilized the premium rate schedule for the Option B insurance coverage in the amount of \$58,000.00 and multiplied it by the premium rate per thousand in effect at that time (0.71), which totalled a bi-weekly premium of \$41.18. The Office subsequently utilized the 476-calendar days, which represented the period that no deductions

⁹ 5 U.S.C. § 8707(d); *see also Keith H. Maples*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁰ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989. 5 U.S.C. § 8707(b)(2). However, the employee is responsible for payment of premiums for optional insurance coverage and coverage without reduction, which is accomplished by authorizing withholdings from his compensation. 5 U.S.C. § 8706(b)(3)(B). *See supra* note 8.

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under the Act could elect continuous withholdings from his compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no insurance; basic coverage subject to continuous withholdings from compensation payments that would be reduced by 2 percent a month after age 65 with a maximum reduction of 75 percent; basic coverage subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65.

were taken and divided by 14 to determine 34 pay periods. The Office multiplied the biweekly premium of \$41.18 by 34 pay periods to total \$1,400.12. However; the correct amount of the overpayment is unclear as the Board is unable to ascertain the difference between the cost for the basic life insurance and the additional Option B insurance. The Board finds that the amount of the overpayment is unclear. Thus it is impossible for the Board to ascertain the correct amount of the overpayment. The Board will set aside the August 4, 2004 decision on the amount of the overpayment and remand the case to the Office for a proper analysis and explanation of its calculation of overpayment.

CONCLUSION

The Board finds that an overpayment occurred for the period August 11, 2002 to November 29, 2003, when the Office neglected to deduct the additional premium amounts for the Option B life insurance premiums, which exceeded the basic life insurance coverage that appellant was entitled to have with no deduction from his compensation. Given, that the amount of the overpayment is in question, the Board further finds that the case is not in posture for a decision on the issues of fault and recovery of overpayment.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed with regard to the fact of overpayment; the decision is set aside for further development consistent with this decision with regard to the issues of amount, waiver and recovery of the overpayment.

Issued: May 20, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member