

FACTUAL HISTORY

The Office accepted that on November 29, 1993 appellant, then a 33-year-old letter carrier, sustained an injury to her upper back while lifting a parcel in the performance of duty.¹ The Office accepted the claim for cervical and thoracic strain and left brachial neuritis. Appellant thereafter underwent a cervical radiculopathy on the left side secondary to a herniated disc at C5-6 on April 21, 1994.² On July 17, 1996 she sustained a second employment injury that occurred when she reached for a tray of flats and experienced low back pain. The Office accepted her claim for lumbar sprain.³ Additionally, the Office authorized a discectomy/laminectomy/fusion and instrumentation anterior and posterior and lumbar decompression with arthrodesis and autograft and allograft L4-S1.⁴ Appellant received appropriate compensation benefits.⁵

In a worksheet dated August 5, 2004, the Office determined that appellant received an overpayment because it did not start deducting basic life insurance premiums until October 2003. The Office determined that she had an annual salary of \$35,849.00 for life insurance purposes. For the period November 10, 1996 to April 24, 1999, the Office indicated that the basic life insurance premiums were \$12.54 per pay period. The Office noted that appellant received 32 payments during this time frame, which was equal to \$401.28. For the period April 25, 1999 to January 25, 2003, the Office indicated that the basic life insurance premiums were \$11.78 per pay period. The Office noted that appellant received 49 payments which was equal to \$577.22. For the period January 26 to October 4, 2003, the premiums were \$11.40 per pay period. The Office indicated that appellant received nine payments equal to \$102.60. The Office combined these three payments and determined that appellant received an overpayment in the amount of \$1,081.10.

On August 26, 2004 the Office issued a preliminary determination indicating that appellant had been overpaid in the amount of \$1,081.10, which occurred because basic life insurance premiums were not deducted from her compensation for the period November 10, 1996 through October 4, 2003. The Office made a preliminary finding that she was without fault in creating an overpayment. The Office informed appellant of her right to challenge the amount of the overpayment or request a waiver of the overpayment by one of three methods including a request for a telephone conference, a request for a written review of the record or a request for a precoupment hearing. If she wished a waiver of the overpayment, she was

¹ The record reflects that appellant had preexisting conditions, including discogenic disc disease at L3-S1, cervical fusion at C5-6, cauda-equina syndrome and diabetes.

² Appellant returned to regular duty on April 20, 1995.

³ Appellant did not return to work after this injury.

⁴ Appellant underwent the surgery on May 8, 1997. The surgery caused a loss of use of the left leg. The Office also authorized the use of an electric wheelchair.

⁵ The Office doubled the claims on November 28, 1997. Appellant received a schedule award on April 26, 1999 for a 39 percent loss of use, of the left lower extremity.

specifically directed to submit financial information by completing an overpayment recovery questionnaire. Appellant did not respond.

By decision dated October 4, 2004, the Office finalized the overpayment determination finding that appellant had received an overpayment of compensation in the amount of \$1,081.10, for which she was not at fault, but that she was not entitled to waiver of recovery. The Office directed that recovery would be made from her continuing compensation payments at the rate of \$214.46 every four weeks.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance Program (FEGLI),⁶ 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 compensationner 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 under withholding 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.⁷

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 did not start deducting basic life insurance premiums when appellant was placed on the periodic rolls on November 10, 1996. The error was not discovered until the Office began deducting the basic life insurance premiums in October 2003. The Office noted that coverage was effective in this case, as coverage for basic life insurance is effective unless waived. Indeed, federal employees are automatically enrolled in basic life insurance unless they waive the coverage or are ineligible.⁸ The record does not contain any documentation from

⁶ The law governing life insurance for federal employees is found at 5 U.S.C. §§ 8701-8716.

⁷ *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).

⁸ 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 compensationner status and that the claimant completed no life insurance election (SF 2817), waiving or canceling basic life. *See id.*, Chapter 5.401.5.

appellant suggesting that she waived her basic life insurance coverage. The Office determined that, when appellant was placed on the periodic rolls, no deduction was made for her basic life insurance coverage. She was placed on the periodic rolls in November 1996 and advised that no deductions for basic life insurance coverage were made until October 4, 2003. The Office determined that appellant's deductions from November 10, 1996 to April 24, 1999, were \$12.54 per pay period for 32 pay periods or \$401.28. For the period April 25, 1999 to January 25, 2003, the Office determined that the basic life insurance premiums were \$11.78 per pay period, for 49 pay periods or \$577.22. For the period January 26 to October 4, 2003, the premiums were determined to equal \$11.40 per pay period for nine pay periods, or \$102.60. The Office added these three payments to determine that appellant received an overpayment in the amount of \$1,081.10. As these premiums were not deducted from her compensation payments, this resulted in an overpayment in the amount of \$1,081.10. The Office properly determined that appellant received an overpayment of compensation. The Board will affirm the Office's October 4, 2004 decision on the issue of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.⁹ These statutory guidelines are found in section 8129(b) of the Federal Employees' Compensation Act which states:

"Adjustment or recovery [of an overpayment] by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience."¹⁰

Since the Office found appellant to be without fault in the creation of the overpayment then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.¹¹

Section 10.438 provides that 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 recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. The information is also used to

⁹ *Frederick Arters*, 53 ECAB 397 (2002).

¹⁰ *See* 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361 (1994).

¹¹ Before seeking to recover an overpayment or adjust benefits, the Office will advise the beneficiary in writing that: (a) the overpayment exists and the amount of the overpayment; (b) a preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment; (c) he or she has the right to inspect and copy government records relative to the overpayment; and (d) he or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived. *See* 20 C.F.R. § 10.431.

determine the repayment schedule, if necessary.¹² Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹³

ANALYSIS -- ISSUE 2

As appellant was without fault in creating the overpayment, the Office proceeded to determine whether she was entitled to waiver of the overpayment. The Office advised appellant on August 26, 2004 that, to support a request for waiver of the overpayment, she needed to submit a completed overpayment recovery questionnaire and provide supporting documents such as copies of income tax returns, bank account statements, bills, canceled checks and any other records to support the income and expenses listed in the questionnaire. However, she failed to respond to the Office's preliminary overpayment notification. Section 10.438 provides that it is appellant's responsibility to submit information supporting waiver of an overpayment.¹⁴ The Office clearly advised her of her responsibility to submit such information. Appellant did not respond. Although the Office found appellant to be without fault in the creation of the overpayment, she nonetheless bears responsibility for providing the financial information necessary to support waiver. Under these circumstances the Office's regulations mandate the denial of waiver.¹⁵

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) provides in pertinent part:

“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.”¹⁶

Section 10.438 of the regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as

¹² 20 C.F.R. § 10.438(a).

¹³ 20 C.F.R. § 10.438(b).

¹⁴ 20 C.F.R. § 10.438.

¹⁵ *Id.*

¹⁶ 20 C.F.R. § 10.441.

specified by [the Office].¹⁷ Appellant's financial information is also used to determine any necessary repayment schedule.¹⁸

ANALYSIS -- ISSUE 3

On August 26, 2004 the Office requested that appellant submit an overpayment recovery questionnaire and supporting financial documents. She did not respond to the Office's preliminary overpayment determination. Consequently, the Office did not have any information about appellant's personal finances in determining the method of repayment. If a claimant is being paid compensation and does not respond to the preliminary overpayment decision, the debt should be recovered from such benefits as quickly as possible.¹⁹ Based on appellant's failure to provide the required financial information, the Board finds that the Office did not abuse its discretion in requiring repayment of the \$1,081.10 overpayment by deducting \$214.46 from her continuing compensation checks.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,081.10, because life insurance premiums were underwithheld from appellant's compensation checks. The Board further finds that the Office properly denied waiver of the overpayment and properly determined that the overpayment should be recovered by deducting \$214.46 from her continuing compensation.

¹⁷ 20 C.F.R. § 10.438.

¹⁸ *Id.*

¹⁹ See *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (May 2004).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board