

life insurance coverage at no cost to him, and that he received an overpayment of compensation because premiums for basic life insurance were not deducted from his compensation payments from November 23, 1991 to September 6, 2003. The Board remanded the case to recalculate the amount of the overpayment.¹ In a decision dated March 15, 2005, the Board found that the Office based the amount of the overpayment on an incorrect rate of pay, and again remanded the case for recalculation of the amount of appellant's overpayment.²

On June 24, 2005 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$2,610.40 that arose because it failed to deduct basic life insurance premiums from his compensation payments from November 23, 1991 through September 6, 2003. The Office calculated the amount of the overpayment by rounding appellant's annual salary of \$49,290.00 to the nearest \$1,000.00 and adding \$2,000.00, then multiplying the result, \$52,000.00 by the established rates of .185 for the period November 23, 1991 to January 9, 1993, .165 for the period January 10, 1993 to April 24, 1999, .155 for the period April 25, 1999 to January 25, 2003 and .150 for the period January 26 to September 6, 2003 to arrive at the biweekly cost of basic life insurance. The Office then multiplied the biweekly cost by two times the number of compensation payments made during each of these periods, and subtracted the amount, \$48.10, appellant paid in premiums by deductions from his pay for sick leave for five pay periods ending from June 13 to August 22, 1992. The Office found that appellant was without fault in the creation of the overpayment, and requested that he submit financial information within 30 days to allow it to consider waiving recovery of the overpayment.

In a July 1, 2005 letter, appellant responded that the Office had not shown that he elected basic life insurance, that waiver of the overpayment was predetermined by the Office's affirmative illegal actions, and that recovery of the overpayment would be against equity and good conscience and would defeat the purpose of the Federal Employees' Compensation Act. Appellant stated that financial documents were not included due to the Office's failure to establish an overpayment, and because the requested financial data was excessive and an invasion of privacy.

By decision dated July 28, 2005, the Office found that appellant received an overpayment of compensation in the amount of \$2,610.40 that arose because it failed to deduct basic life insurance premiums from his compensation payments from November 23, 1991 through September 6, 2003. The Office refused to waive recovery of the overpayment finding that appellant failed to provide financial information to justify waiver.

LEGAL PRECEDENT -- ISSUE 1

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

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

² Docket No. 04-2279 (issued March 15, 2005).

or more of the options.³ The coverage for basic life insurance is effective unless waived⁴ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁵ While the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee's compensation.⁶ 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.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 the Office of Personnel Management upon discovery of the error.⁸

ANALYSIS -- ISSUE 1

In the prior appeals, the Board found that appellant received an overpayment of compensation that arose because the Office did not deduct premiums for basic life insurance from his compensation payments from November 23, 1991 to September 6, 2003. The Board remanded the case to the Office for recalculation of the amount of the overpayment.

The Office has now properly calculated the amount of appellant's overpayment of compensation. It based the amounts of his premiums of a correct yearly salary of \$49,290.00, multiplied this salary, rounded up to the nearest \$1,000.00 plus \$2,000.00, by the established rates⁹ to arrive at the biweekly cost of basic life insurance. The Office then multiplied the biweekly cost by two times the number of compensation payments made during each of these periods,¹⁰ and subtracted the amount, \$48.10, appellant paid in premiums by deductions from his pay for sick leave for five pay periods ending from June 13 to August 22, 1992, to arrive at an overpayment in the amount of \$2,610.40.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act¹¹ provides that an overpayment of compensation must be recovered unless "incorrect payment has been made to an individual who is without fault and

³ 5 U.S.C. § 8702(a).

⁴ 5 U.S.C. § 8702(b).

⁵ 5 U.S.C. § 8707.

⁶ 5 U.S.C. § 8707(b)(1).

⁷ 5 U.S.C. § 8706(b).

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

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 Compensation is paid for four-week periods.

¹¹ 5 U.S.C. § 8129.

when adjustment or recovery would defeat the purpose of this subchapter of the [Act] or would be against equity and good conscience.” Section 10.436 of the Office’s regulations¹² provides:

“Recovery of an overpayment will defeat the purpose of the FECA 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.”

With respect to whether recovery of the overpayment would be against equity and good conscience, section 10.437 of the Office’s regulations¹³ provides:

“(a) 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.

“(b) 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. In making such a decision, [the Office] does not consider the individual’s current ability to repay the overpayment.”

Section 10.438 of the Office’s regulations¹⁴ provides:

“(a) 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.

“(b) 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.”

¹² 20 C.F.R. § 10.436.

¹³ 20 C.F.R. § 10.323(b).

¹⁴ 20 C.F.R. § 10.438.

ANALYSIS -- ISSUE 2

The Office determined that appellant was without fault in creating the overpayment, and requested that he submit financial information within 30 days to determine whether recovery of the overpayment should be waived. As appellant refused to submit any financial information, the Office properly found, pursuant to its regulations, that he had not established that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. Appellant has not alleged, and the evidence does not show, that he relinquished a valuable right or changed his position for the worse in reliance on the overpayment.

CONCLUSION

The Office properly found that appellant received an overpayment of compensation in the amount of \$2,610.40, and properly refused to waive recovery of this overpayment.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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