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BILLY G. GARNER, Appellant	)	
	)	
and	)	Docket No. 05-1749
	)	Issued: February 17, 2006
U.S. POSTAL SERVICE, POST OFFICE,	)	
New Iberia, LA, Employer	)	
	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

On August 22, 2005 appellant filed a timely appeal of an August 4, 2005 decision of the Office of Workers' Compensation Programs regarding an overpayment of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this overpayment decision.

The issues are whether appellant received an overpayment of compensation in the amount of \$2,785.78, and if so, whether the Office properly refused to waive recovery of the overpayment.

On August 27, 2002 appellant, then a 49-year-old clerk, filed a claim for compensation for a traumatic injury to his back sustained on that date by reaching for a telephone. At the time of injury, he was working limited duty four hours per day and receiving compensation for partial disability from the Office for the other four hours per day for an accepted August 6, 1985 back injury. He stopped work on August 27, 2002 and received continuation of pay for four hours per

day from August 28 to October 11, 2002 then used four hours per day of annual leave through October 25, 2002. By decision dated October 11, 2002, the Office denied appellant's claim for a traumatic injury sustained on August 27, 2002.

On October 19, 2002 appellant filed a claim for compensation for the period beginning October 26, 2002 and also filed a claim for compensation for a recurrence of disability beginning August 27, 2002 due to his accepted August 6, 1985 back injury. By decisions dated May 1 and 22, 2003, the Office denied appellant's claim for a recurrence of disability, finding that the evidence did not establish that he was totally disabled beginning August 28, 2002 or that his absence from work beginning that date was related to his accepted August 6, 1985 injury. The Office continued to pay compensation for partial disability.

By letter dated August 10, 2004, the Office preliminarily determined that appellant had received an overpayment of compensation in the amount of \$2,452.78 that arose because premiums for health benefits and optional life insurance were not deducted from his compensation for the period November 30, 2002 through February 21, 2004. The Office preliminarily found that appellant was at fault in the creation of the overpayment on the basis that he accepted payments he should have known were incorrect, because when he received his monthly benefits statement it should have been clear there were no deductions being taken out for premiums for health benefits or optional life insurance. The Office calculated the amount of the overpayment by multiplying the amount that should have been deducted for premiums for health benefits and optional life insurance by the number of payments for which the deductions were not made from November 30, 2002 to February 21, 2004, arriving at an overpayment in the amount of \$2,983.38. From that amount the Office deducted \$530.60, which is the amount the Office deducted from his compensation payment from June 13 to July 10, 2004 for premiums for health benefits and optional life insurance. During that period the premiums were also deducted from appellant's pay after he returned to work on June 7, 2004.

In an August 25, 2004 letter, appellant contended that there was no overpayment of compensation because his compensation payments remained the same as they had been since he returned to work for 20 hours per week in 1998, and because his health insurance was cancelled without his knowledge. He also stated that he had no way of knowing that deductions were not taken out of his payments, as they were directly deposited into the bank.¹

By decision dated August 4, 2005, the Office found that appellant received an overpayment of compensation in the amount of \$2,785.78 that arose because premiums for health benefits and optional life insurance were not deducted for the period November 30, 2002 through February 21, 2004. The Office found that the preliminary finding that he was at fault in the matter of the overpayment was incorrect for the reason that he accepted compensation payments he should have known were incorrect. The decision then stated that, even though he had been found to be without fault, waiver of recovery of the overpayment was not warranted for the reason that he accepted payments he should have known were incorrect.

¹ In this letter, appellant requested a prerecoupment hearing, which was scheduled for April 6, 2005. Appellant did not appear at this hearing and the Office found that he abandoned his request for a hearing in a June 29, 2005 decision, which appellant has not appealed.

LEGAL PRECEDENT

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(b)(1) provides:

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

The Federal Employees’ Compensation Act and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain conditions and may also retain the optional life insurance.² At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under “compensationeer” status. If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments. Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.³ When an underwithholding of life insurance premiums occurs, the entire amount of the underwithholding is deemed an overpayment of compensation because the Office must pay the full premium to OPM upon discovery of the error.⁴

Section 8129(a) of the Act provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery 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.”⁵ No waiver of an overpayment is possible if the claimant is not “without fault” in helping to create the overpayment.

² 5 C.F.R. §§ 870.201, Subpart B, 870.701, Subpart G, 872.201, Subpart B, 873.203, Subpart B.

³ *Scherrie L. Stanley*, 53 ECAB 433 (2002).

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

⁵ 5 U.S.C. § 8129.

In determining whether an individual is not “without fault” or, alternatively, “with fault,” section 10.320 of Title 20 of the Code of Federal Regulations states in pertinent part:

“An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have known to be material; or
- (3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.”⁶

ANALYSIS

The Board finds that appellant received an overpayment of compensation based on the Office’s failure to deduct premiums for health benefits and optional life insurance from November 3, 2002 to February 21, 2004. During this period, such premiums were not deducted from appellant’s pay, as he was not working, or from his workers’ compensation payments. Appellant has alleged that his health benefits were cancelled during this period, but he has not submitted any evidence establishing that his enrollment did not continue during this period. He is therefore responsible for the premiums for health benefits, as well as for the premiums for optional life insurance.

The Board further finds that the amount of the overpayment of compensation was incorrectly calculated. The Office correctly calculated that the amount of the unpaid premiums for health benefits and optional life insurance for the period from November 3, 2002 to February 21, 2004 was \$2,983.38. The Office, however, then offset this amount by the amount it overwithheld from appellant’s compensation payments for the period from June 13 to July 10, 2004. Such an offset is not allowed, as it permits an unrestricted recovery of the offset portion of the overpayment without regard to the factors set forth for considering waiver in the Office’s regulations, which denies administrative due process with respect to the amounts offset.⁷

With regard to fault and waiver, the Board finds that the Office’s August 4, 2005 decision is internally inconsistent and cannot be allowed to stand. This decision stated both that the preliminary finding that appellant was at fault was incorrect, and that appellant accepted payments he should have known were incorrect, which is one of the standards showing fault. The case must be remanded to the Office for a proper finding whether appellant was without fault in the creation of the overpayment and, if so, whether recovery of the overpayment should be waived.

⁶ 20 C.F.R. § 10.320(b).

⁷ *Michael A. Grossman*, 51 ECAB 673 (2000).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,983.38. The Board further finds that the Office improperly adjudicated the issues of fault and waiver.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2005 decision of the Office of Workers' Compensation Programs is modified to reflect that appellant received an overpayment of compensation in the amount of \$2,983.38. The case is remanded to the Office for proper findings on fault and waiver.

Issued: February 17, 2006
Washington, DC

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

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