United States Department of Labor
Employees' Compensation Appeals Board

FREDDIE L. THOMAS, Appellant	)	
and	)	**Docket No. 05-1864**
	)	**Issued: May 1, 2006**
DEPARTMENT OF THE AIR FORCE, NAVAL AIR STATION JOINT RESERVE BASE, Fort Worth, TX, Employer	)	

Appearances:
Freddie L. Thomas, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 7, 2005 appellant filed a timely appeal of an August 19, 2005 merit decision of the Office of Workers' Compensation Programs, finding that an overpayment occurred in the amount of $3,148.10, that he was not at fault in the creation of the overpayment and that waiver was not warranted. The Office also determined that $50.00 would be deducted every 28 days from his ongoing compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issue is whether the Office properly issued the August 19, 2005 overpayment decision.

FACTUAL HISTORY

This case has previously been before the Board. The facts of this case are presented in the previous Board decisions and are hereby incorporated by reference. The facts relevant to the current issue are set forth below.

In a July 14, 2004 decision,[1] the Board found that appellant had received an overpayment of compensation due to the failure of the Office to deduct life insurance premiums from his compensation during the period September 13, 1998 through June 14, 2003. However, the Board found that the Office had not provided the necessary calculations to determine how the amount of the overpayment was determined. The Board remanded the case for a detailed explanation of how the Office concluded that the amount of the overpayment was $1,822.11. The Board further found that the Office had not properly evaluated appellant's financial information to determine whether he was entitled to a waiver of overpayment. In a July 19, 2005 decision, the Board reviewed the Office's September 14, 2004 decision, finding that appellant had received an overpayment in the amount of $1,822.11. The Board found that the Office still had not properly explained the amount of the overpayment and remanded the case for further development.[2]

On remand, in a decision dated August 19, 2005, the Office determined that appellant had received an overpayment in the amount of $3,148.10. The Office calculated this amount as follows. The Office determined that it had not collected basic life insurance until June 15, 2003 instead of commencing September 1, 1997. It determined that, for the period June 15, 2003 to August 6, 2005, appellant had paid $195.30 for basic life insurance[3] whereas the amount he owed for that time period was $1,029.92,[4] resulting in an overpayment of $834.62. The Office then determined that it should have been collecting optional life insurance under "Code R," but instead had made deductions under "Code Z." Accordingly, although appellant paid $7,834.14,

[1] Docket No. 04-411 (issued July 14, 2004).

[2] Docket No. 05-85 (issued July 19, 2005).

[3] $9.30 multiplied by 21 pay periods equals $195.30.

[4] Appellant owed $5.28 for one biweekly pay period from September 1 to 13, 1997; $221.76 for the periods September 14, 1997 through April 24, 1999 ($10.56 multiplied by 28 pay periods equals $221.76); $486.08 for the period April 25, 1999 through January 25, 2003 ($9.92 multiplied by 49 pay periods equals $486.08); and $316.80 for the period January 26, 2003 through August 6, 2005 ($9.60 multiplied by 33 pay periods equals $316.80). The total amount owed was therefore $1,029.92.

for the period September 1, 1997 through August 6, 2005,[5] he should have paid $8,001.30,[6] for a difference of $167.16. Finally, the Office noted that he should have been paying post retirement premiums from September 12, 1998 through August 6, 2005 in the amount of $3,526.72,[7] whereas appellant only paid $1,380.40,[8] for a difference of $2,146.32. The Office concluded that this resulted in an overpayment of $3,148.10.[9] The Office further found that, although appellant was without fault in the creation of the overpayment, waiver was denied. Finally, the Office determined that the overpayment would be collected by withholding $50.00 from continuing compensation payments effective September 3, 2005 until the amount was paid.

LEGAL PRECEDENT

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 or more of its options.[10] The coverage for basic life insurance is effective unless waived[11] and the premiums for basic and optional life coverage are withheld from the employee's pay.[12] While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.[13] At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensationer status. If the compensationer chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from

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[5] Appellant made payments as follows: September 1 through 27, 1997: $57.80; September 28 through October 20, 1997: $57.80; October 21, 1997 through November 8, 1997: $28.90; November 9, 1997 through June 19, 1999: $57.80 multiplied by 21 pay periods or $1,213.80; June 20, 1999 through July 15, 2000: $48.10 multiplied by 14 pay periods or $673.40; July 16, 2000 to February 22, 2003: $998.20 multiplied by 34 pay periods or $3,338.80; February 23, 2000 through June 14, 2003: $89.50 multiplied by 4 pay periods equals $358.00; June 15, 2003 through January 22, 2005: $57.02 multiplied by 22 pay periods or $1,254.44; and from January 23 through August 6, 2005: $121.60 multiplied by 7 pay periods equals $851.20. The total paid amounts to $7,834.14.

[6] Employee owed, under Code R, from September 1 through 13, 1997, one pay period or $19.20; September 14, 1997 through April 24, 1999: $38.00 multiplied by 21 pay periods or $798.00; April 25, 1999 through January 29, 2000: $31.60 multiplied by 10 pay periods or $316.00; January 30, 2000 through January 25, 2003: $64.10 times 39 pay periods equals $2,499.90; January 26, 2003 through January 22, 2005: $138.30 multiplied by 26 pay periods equals $3,491.80 plus January 23, 2005 through August 6, 2005: $125.20 multiplied by 7 pay periods equals $876.40.

[7] Appellant should have paid post retirement with no reduction from September 12, 1998 through April 24, 1999: $49.92 multiplied by 8 pay periods for $399.36; April 25, 1999 through January 25, 2003: $60.18 multiplied by 49 pay periods equals $2,947.84; and from January 26, 2003 through August 6, 2005: $54.40 multiplied by 33 pay periods, or $179.52. This total is $3,526.72.

[8] Appellant paid $54.40 for the pay period June 15 through July 12, 2003 and $1,326.00 for the pay periods July 13, 2003 through August 6, 2005 ($51.00 multiplied by 26 pay periods) for a total of $1,380.00.

[9] $834.62 plus $167.16 plus $2,146.32 equals $3,148.10.

[10] 5 U.S.C. § 8702(a).

[11] 5 U.S.C. § 8702(b).

[12] 5 U.S.C. § 8707.

[13] 5 U.S.C. § 8707(b)(1).

his or her compensation payments.[14] 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 the Office of Personnel Management (OPM) upon discovery of the error.[15]

Section 10.431 of the implementing regulations provides that, before seeking to recover an overpayment or adjust benefits, the Office will advise the individual in writing that the overpayment exists and the amount of the overpayment.[16] The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.[17] Additionally, the Office is obliged to advise the individual of his or her right to inspect and copy the government records relating to the overpayment.[18] Lastly, the preliminary notice must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable and the right to request a waiver of recovery of the overpayment.[19] The recipient of the alleged overpayment may present evidence in response to the Office's preliminary notice either in writing or at a prerecoupment hearing.[20] The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment.[21] Failure to request the hearing within the 30-day time period shall constitute a waiver of that right.[22]

ANALYSIS

In the instant case, the Office initially determined that appellant received an overpayment in the amount of $1,822.11, due to the fact that life insurance and post-retirement premiums were not properly collected from September 13, 1998 through June 14, 2003. On appeal the Board determined that the Office had not properly explained how it had determined that the amount of the overpayment was $1,822.11 and remanded the case for the Office to provide the calculations behind its conclusion. On remand, the Office, upon calculating the overpayment amount,

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[14] 5 U.S.C. § 8706(b).

[15] 5 U.S.C. § 8707(d); *see Keith H. Mapes*, 56 ECAB ___ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte,* 48 ECAB 334 (1997). An under withholding of premiums results in a two-tiered liability. The claimant owes the agency the under withheld 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 under withholding, even if the debt is eventually waived. Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.11b(2) (August 2004).

[16] 20 C.F.R. § 10.431(a) (2005).

[17] 20 C.F.R. § 10.431(b) (2005).

[18] 20 C.F.R. § 10.431(c) (2005).

[19] 20 C.F.R § 10.431(d) (2005).

[20] 20 C.F.R § 10.432 (2005).

[21] *Id.*

[22] *Id.*

increased the amount of the alleged overpayment to $3,148.10. This increase appears to be due, in part, to the Office calculating erroneous deductions for the period post-June 14, 2003, a period of time not covered by the previous notice of overpayment and decisions. Although the Office did provide calculations in support thereof, the Office failed to follow the necessary procedures for increasing the amount of the overpayment. The Office never gave appellant preliminary notice of the new amount or provided him the opportunity to inspect and copy the government records relating to the overpayment.[23] Furthermore, the Office did not provide him the right to challenge the amount of the overpayment. Accordingly, the Board finds that the Office infringed upon appellant's procedural rights under its own regulations, 20 C.F.R. §§ 10.431 and 10.432 and procedures when it did not provide him with the proper notice of the increased amount of the overpayment.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 19, 2005 is set aside and the case remanded for further consideration consistent with this decision.

Issued: May 1, 2006
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

[23] *See* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4 (May 2004), which discusses in detail the necessity of the Office to issue preliminary and final decision especially in situations similar to the subject of this appeal.