

**United States Department of Labor
Employees' Compensation Appeals Board**

R.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS ENFORCEMENT,)
McAllen, TX, Employer)

Docket No. 06-615
Issued: September 12, 2006

Appearances:
R.C., *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 January 17, 2006 appellant timely appealed the October 20, 2005 decision of the Office of Workers' Compensation Programs which found an overpayment in the amount of \$1,563.46, denied waiver of the overpayment and set the repayment schedule. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over these issues.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,563.46 for failure to deduct basic life insurance premiums; (2) whether the Office properly denied waiver of the overpayment; and (3) whether the Office properly set recovery as deductions in the amount of \$50.00 from each of appellant's continuing compensation payments.

FACTUAL HISTORY

On April 25, 1997 appellant filed an occupational disease claim alleging that he sustained depression as a result of his federal employment. On December 17, 1997 the Office accepted his

claim for post-traumatic stress disorder. On October 27, 2000 appellant filed a claim for a recurrence of this injury. His claim was treated as a claim for a new injury and was accepted for aggravation of post-traumatic stress disorder. Appellant was paid appropriate medical and compensation benefits.

By letter dated September 20, 2005, the Office informed appellant of a preliminary determination that he had been overpaid benefits in the amount of \$1,563.46 because basic life insurance premiums were not deducted from his disability compensation for the period June 16, 2002 through September 3, 2005.¹ A preliminary determination was also made that appellant was without fault in the creation of the overpayment and he was sent financial forms to complete if he wished to request a waiver. Appellant was informed that, if the Office did not receive a reply within 30 days, a final decision would be issued on the basis of the information currently of record. He did not reply within the allotted time.

On October 20, 2005 the Office issued a decision finalizing the overpayment. The Office determined that it would withhold \$50.00 from each continuing compensation check until the amount was paid in full.

LEGAL PRECEDENT -- ISSUE 1

The 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 Federal Employee 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.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 While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.⁷ At separation from

¹ Appellant's life insurance premium was \$13.65 biweekly. Life insurance premiums should have been deducted from compensation payments covering June 16, 2002 to January 25, 2003 in the amount of \$225.76. Premiums should have been deducted from compensation checks covering the period January 26, 2003 to September 3, 2005 in the amount of \$1,337.70. The total amount not properly deducted from appellant's compensation checks for life insurance premiums is \$1,563.46.

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)(1).

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.⁸ 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 (OPM) upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

Appellant's claim was accepted for an aggravation of post-traumatic stress disorder. Although he had authorized deductions for basic life insurance, the Office deducted no premiums from his compensation for life insurance. The Board finds that the Office properly determined that an overpayment of compensation was created due to its failure to deduct basic life insurance premiums. Life insurance premiums should have been deducted from appellant's compensation checks in the amount of \$13.65 biweekly. Premiums should have been deducted for the period June 16, 2002 to January 25, 2003 in the amount of \$225.76 and premiums should have been deducted from compensation checks covering the period January 26, 2003 to September 3, 2005 in the amount of \$1,337.70. This resulted in a total overpayment of \$1,563.46. The Board will affirm the Office's decision on the 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.¹⁰ The statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment recovery [of an overpayment] by the United States may not be made when [an] 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."¹¹

Section 10.436 of the implementing regulation¹² provides that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship in a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office

⁸ 5 U.S.C. § 8706(b).

⁹ 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 underwithholding 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 5.401.11(b)(2) (August 2004).

¹⁰ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹¹ See 5 U.S.C. § 8129(b); *Carroll R. Davis*, 46 ECAB 361, 363 (1994).

¹² 20 C.F.R. § 10.436.

seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or 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.¹³ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

Section 10.437 provides that recover of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an 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.¹⁵

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 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. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.¹⁶

ANALYSIS -- ISSUE 2

On September 20, 2005 the Office made a preliminary determination that appellant was without fault in the creation of the overpayment and requested that he provide financial information by completing an overpayment recovery questionnaire, OWCP-20, if he desired waiver of the overpayment in question. Appellant was directed to submit this information within 30 days. He did not respond. Appellant failed to submit a completed Form OWCP-20 or otherwise submit financial information regarding his income and expenses. As a result, the Office did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of the Act or if recovery would be against equity and good conscience.¹⁷

As appellant failed to submit the financial information required by section 10.438 during the time frame specified. The Office properly applied the regulations and denied waiver of recovery of the overpayment. Appellant has not shown that recovery of the overpayment would

¹³ An individual's assets must exceed a resource based of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. *See Robert F. Kenney*, 42 ECAB 297 (1991).

¹⁴ *See Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

¹⁵ 20 C.F.R. § 10.437.

¹⁶ 20 C.F.R. § 10.438.

¹⁷ *See* 20 C.F.R. § 10.438 (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

defeat the purpose of the Act or would be against equity and good conscience. The Board finds that the Office properly denied waiver of recovery of the overpayment of compensation.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of the Office's regulations provides:

“Whenever 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 the 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 hardship.¹⁹

ANALYSIS -- ISSUE 3

The Office instructed appellant to submit financial data within 30 days of the September 20, 2005 preliminary overpayment determination. Appellant did not submit a response. It is the claimant's responsibility to submit information that may be used in determining the repayment rate. When an individual fails to provide the requested financial information, the Office should follow minimum collection guides designed to collect the debt promptly and in full.²⁰ The Office found that appellant could repay the overpayment by deducting \$50.00 from each continuing compensation payment until the debt was recovered. There is no evidence to establish that the recovery rate was unreasonable.²¹

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,563.46, that the Office properly denied waiver of the overpayment and that it properly set recovery by deducting \$50.00 from appellant's continuing compensation payments.

¹⁸ Appellant submitted additional evidence subsequent to the Office decision of October 20, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

¹⁹ 20 C.F.R. § 10.321.

²⁰ *See Ralph P. Beachum, Sr.*, 55 ECAB ____ (Docket No. 03-2142, issued April 1, 2004); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 1994).

²¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2005 is hereby affirmed.

Issued: September 12, 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