

infarction. He has not worked since August 14, 1989. Appellant was placed on the periodic rolls.

On November 22, 2005 the Office issued a preliminary determination that an overpayment was created in the amount of \$786.24 for the period January 23 through October 1, 2005 because basic life insurance premiums had not been deducted from his compensation. The Office noted a change in computer systems in January 2005, when the system dropped withholding of his postretirement basic life premiums. It found that appellant was without fault in the matter because he contacted them and attempted to correct the error, but was not successful.¹ The Office advised appellant that if he disagreed with the fact or amount of the overpayment he could submit new evidence in support of his contention. It advised appellant that, as he was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that it would defeat the purpose of the law or would be against equity and good conscience. The Office informed appellant that he had the right to request a preresumption hearing on the matter of the overpayment and that any response he wished to make with regard to the overpayment should be submitted within 30 days of the November 22, 2005 letter. Appellant completed and signed the overpayment questionnaire on November 28, 2005 in which he requested waiver of overpayment and listed his monthly expenses and assets; the letter was received by the Office on December 2, 2005.

In a decision dated March 17, 2006, the Office finalized the preliminary determination regarding the overpayment of \$786.24, finding that appellant was not entitled to waiver. Appellant listed total monthly expenses of \$4,408.00 and total monthly income of \$4,220.08, but the Office found that the expenses of \$700.00 in utilities and \$700.00 as miscellaneous were excessive and undocumented. The Office therefore found that appellant did not need substantially all of his monthly income to meet "ordinary and necessary" living expenses. The Office further found that appellant had income or financial resources sufficient for more than ordinary needs, as his claimed assets, totaling \$33,400.00, far exceeded the \$3,000.00 minimum mandated by the regulations.² The Office found that appellant did not relinquish a valuable right or change his financial position for the worse due to the overpayment and did not present

¹ An April 22, 2005 Office memorandum noted that appellant telephoned the Office on April 21, 2005 and advised that his payments for life insurance were not being deducted from his compensation payments. The Office informed appellant that implementation of a new computer system created this error, which it was working to correct. Appellant telephoned the Office on May 19, September 6 and October 3, 2005 and reiterated that his checks were still not reflecting the deduction of life insurance premiums. He also told the Office on October 3, 2005 that he had called the Office of Personnel Management (OPM) and wanted to know the amount of life insurance he had. OPM told appellant to call the Office, which told him that the premium dropped from \$100.00 to approximately \$90.00. On November 28, 2005 the Office informed appellant that the discrepancy in his life insurance deductions stemmed from 2000, when OPM notified the Office to start deductions for postretirement at the rate of \$109.04 every 28 days, using the annual pay rate of \$58,000.00, at the rate of \$.94 per thousand dollars of coverage. The Office advised appellant that effective January 1, 2003 the rate dropped to \$.85 but his deductions were not updated to reflect that, which resulted in an overdeduction. The Office further informed appellant that the current deduction of \$87.24 was not correct either, as it was not based on the OPM annual salary of \$58,000.00.

² The Board notes that as of October 2004 the asset base for waiver was increased to \$4,800.00 for an individual and \$8,000.00 for claimant and spouse, with additional amounts allowable for other dependants. *See* Federal (FECA) Procedure Manual, Part 6 -- Overpayment, *Waiver of Recovery*, Chapter 6.200.6(a), (October 2004).

information to support that repayment of the debt would result in financial hardship. It ordered appellant to make repayment for the balance of the \$786.24 overpayment within 30 days.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance with one or more options.³ The coverage for basic life is effective unless waived⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.⁵ Under the FEGLI program, insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments. The injured employee remains responsible for all insurance premiums. When FEGLI premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because the Office must pay the full premium to the OPM upon discovery of the error.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$786.24 for the period January 23 through October 1, 2005. The record shows that an overpayment occurred because basic life insurance premiums were not deducted from his compensation during this period. The Office calculated the amount of overpayment by taking the amount of basic life insurance which was supposed to have been deducted from his compensation every two weeks, \$87.36, between the period January 23 through October 1, 2005, and multiplying it times 9, the number of monthly pay periods during that period, to arrive at a total overpayment of \$786.24.⁷ Based on this determination, the Board finds that appellant received an overpayment of compensation in the stated amount during that period.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Federal Employees' Compensation Act, 5 U.S.C. § 8129(b), and the implementing regulations, an overpayment must be recovered unless 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.⁸ Waiver of overpayment is not possible if the individual is at fault in creating the overpayment.⁹ The Office

³ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997); Part 870 -- Basic Life Insurance, subpart B -- Coverage; see 5 C.F.R. § 870.201.

⁴ 5 C.F.R. § 870.204(a).

⁵ 5 C.F.R. § 870.401(a).

⁶ See *Otte*, *supra* note 3.

⁷ The Office calculated the amount of bi-weekly deduction for life insurance based on appellant's yearly salary of \$40,098.75.

⁸ 5 U.S.C. § 8129(a)-(b).

⁹ *Jorge O. Diaz*, 51 ECAB 124 (1999).

must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.¹⁰

The applicable regulations provide that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office.¹¹ Additionally, 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 or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹²

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.

ANALYSIS -- ISSUE 2

Appellant stated that he had \$4,220.08 in monthly income and \$4,408.00 in expenses. However, he failed to provide sufficient explanation or evidence to support that he had monthly expenses in the stated amount. The Office properly found that appellant's claim of miscellaneous monthly expenses in the amount of \$700.00 was excessive, given that he provided no documentation to establish this amount. While \$700.00 in utilities may not be an unreasonable monthly total; appellant neglected to submit any evidence in support of this claimed expense. Appellant has not demonstrated that he needs substantially all of his current monthly income to meet living expenses or that the amount of the overpayment was wrongly computed. Therefore, he does not qualify for waiver under the "defeat the purpose of the Act" standard.¹³ Further, there is no evidence in this case and appellant did not allege that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he received for the period January 23 to October 1, 2005. Pursuant to its

¹⁰ 20 C.F.R. § 10.434.

¹¹ 20 C.F.R. § 10.436.

¹² 20 C.F.R. § 10.437.

¹³ See *Nina D. Newborn*, 47 ECAB 132 (1995).

regulation, the Office properly denied waiver of recovery of the overpayment in the amount of \$786.24.¹⁴

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) of the regulation¹⁵ provides:

“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.”

ANALYSIS -- ISSUE 3

In the present case, the Office noted appellant’s financial circumstances as well as the amount by which his monthly income exceeded his monthly expenses in finding that he was capable of repaying the overpayment within 30 days. The Board, therefore, finds that the Office properly required repayment in the amount of \$786.24.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment in the amount of \$786.24 for the period January 23 to October 1, 2005 because basic life insurance premiums were not deducted from his compensation. The Office did not abuse its discretion in denying waiver of the overpayment. The Board finds that the Office properly required repayment of the overpayment.

¹⁴ The Board notes that appellant, in a November 26, 2005 handwritten annotation to his response to the overpayment questionnaire, asked which date his life insurance premium was reduced to \$87.36 from \$109.04, the rate he had paid since 1999. By letter dated April 5, 2005, the Office informed appellant that it would reimburse him in the amount of \$271.44, which reflected the difference between what should have been deducted from January 26, 2003 through January 22, 2005 and what was deducted.

¹⁵ 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 9, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board