

FACTUAL HISTORY

Appellant, a 60-year-old tax examining clerk, has an accepted claim for right lateral epicondylitis, which arose on May 24, 1990.² The Office notified appellant on April 11, 1991 that she was being placed on the periodic compensation rolls.³

On August 4, 2004 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$1,240.18 for the period October 21, 1990 to August 7, 2004. The Office explained that it had not deducted premiums for basic life insurance.⁴ Additionally, the Office indicated that appellant was without fault in creating the overpayment.

On August 12, 2004 appellant requested waiver of recovery of the overpayment. She submitted an overpayment recovery questionnaire listing total monthly income of \$1,339.62 and monthly expenses of \$1,308.21. Appellant also reported assets totaling \$726.88. The Office took no further action for almost two years.

On May 5, 2006 the Office issued another preliminary overpayment decision. The decision essentially mirrored the August 4, 2004 preliminary determination. The Office asked appellant to submit current financial information.

Appellant requested a telephone conference, which was held on June 6, 2006. She also submitted a May 18, 2006 overpayment recovery questionnaire. Appellant received \$1,314.88 in wage-loss compensation every 28 days. She reported additional monthly income of \$184.50 from babysitting and a church stipend, for a total monthly income of \$1,499.38. Appellant's monthly expenses totaled \$1,374.42, which included rent, food, clothing, utilities, Internet, automobile payment and credit card payments. Her reported assets totaled \$1,204.60.

In a decision dated June 6, 2006, the Office finalized the preliminary determination regarding the overpayment of \$1,240.18. The Office did not grant a waiver because appellant's monthly income exceeded her monthly expenses by more than \$50.00. The Office also indicated that the overpayment would be recovered by deducting \$35.00 every 28 days from appellant's continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

When Federal Employees' Group Life Insurance (FEGLI) premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation

² Appellant had previously sustained an employment-related injury on October 30, 1985, which the Office accepted for cervical strain, right wrist contusion, bilateral knee contusions and coccyx injury. At the time of her May 1990 injury, appellant was working part time and receiving four hours of wage-loss compensation per day as a result of her 1985 injury.

³ The payments appellant had been receiving on her 1985 claim were terminated in order to consolidate all future payments under the 1990 master file number A13-922770.

⁴ The Office also advised appellant that effective August 8, 2004 it would commence deducting basic life insurance premiums of \$6.30 from her monthly compensation payments.

because the Office must pay the full premium to the Office of Personnel Management (OPM) upon discovery of the error.⁵

ANALYSIS -- ISSUE 1

The record indicates that, while the Office deducted premiums for optional life insurance coverage, it neglected to withhold premiums for basic life insurance coverage that appellant had elected. The Office calculated that the amount of premiums it should have withheld totaled \$1,240.18. The record supports the Office's finding that an overpayment of \$1,240.18 was created for the period October 21, 1990 to August 7, 2004.

LEGAL PRECEDENT -- ISSUE 2

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.⁶ Waiver of recovery of an overpayment is not possible if the individual is at fault in creating the overpayment.⁷ However, a finding that appellant is without fault is insufficient, of itself, for the Office to waive recovery of the overpayment.⁸ The Office must determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.⁹

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 current ordinary and necessary living expenses and the beneficiary's assets do not exceed a specified amount as determined by the Office.¹⁰ 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 any 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.¹¹

⁵ *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

⁶ 5 U.S.C. § 8129(b); *see* 20 C.F.R. §§ 10.430-10.441.

⁷ 20 C.F.R. § 10.433(a).

⁸ 20 C.F.R. § 10.434; *see Jorge O. Diaz*, 51 ECAB 124, 127 (1999).

⁹ 20 C.F.R. § 10.434.

¹⁰ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (October 2004).

¹¹ 20 C.F.R. § 10.437(a), (b).

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.¹²

ANALYSIS -- ISSUE 2

An individual is deemed to need substantially all of her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³ Based on the information provided by appellant, her monthly income (\$1,499.38) exceeded her monthly expenses (\$1,374.42) by \$124.96. While her reported assets of \$1,204.60 would otherwise qualify her for a waiver, the fact that appellant's monthly income exceeds her monthly expenses by more than \$50.00 indicates that recovery of the overpayment would not defeat the purpose of the Act. The record also does not support a finding that recovery would be against equity and good conscience. Appellant has not alleged detrimental reliance, nor does the record support such a finding. Accordingly, the Office properly found that she was not entitled to waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441(a) provides that, if an overpayment of compensation has been made to an individual entitled to further payments and 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 any hardship.¹⁴

ANALYSIS -- ISSUE 3

With respect to the Office's decision to deduct \$35.00 every four weeks from appellant's continuing compensation, the Board finds that such a repayment schedule is appropriate. The record establishes that appellant has available monthly income of almost \$125.00 which could be applied toward recovery of the \$1,240.18 debt owed the Office. Under the circumstances, the Board finds that the Office reasonably imposed a repayment schedule of \$35.00 every four weeks.

CONCLUSION

The Board finds that appellant received an overpayment in the amount of \$1,240.18 during the period October 21, 1990 to August 7, 2004. Furthermore, she is not entitled to waiver

¹² 20 C.F.R. § 10.438(a).

¹³ *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

¹⁴ 20 C.F.R. § 10.441(a).

of recovery of the overpayment and the Office reasonably imposed a repayment schedule of \$35.00 every 28 days to be withheld from appellant's continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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