

FACTUAL HISTORY

On July 23, 1991 the Office accepted that appellant, then a 41-year-old senior secretary, sustained an employment-related dysthymic disorder.¹ She was placed on the periodic roll. A Form CA-7 claim indicated that appellant was not enrolled in optional life insurance. Correspondence from the Office of Personnel Management (OPM) indicated that, beginning on June 20, 1990, appellant received a government disability retirement annuity with basic life insurance deductions. On December 2, 1991 she elected compensation under the Federal Employees' Compensation Act benefits, with no change in life insurance benefits.²

An Office computation worksheet dated January 20, 2006 indicates that deductions for appellant's basic life insurance premiums for January 1, 1992 to December 25, 2004 totaled \$2,138.78 but that the deductions were not made; deductions for optional life insurance were incorrectly made for the period August 23, 1992 to January 21, 2006, totaling \$448.60; and basic life insurance for the period December 26, 2004 to January 21, 2006 was entered under the incorrect code for a total overdeduction of \$168.00. By adding the overdeductions of \$448.60 and \$168.00 to equal \$616.60 and subtracting this from the underdeduction of \$2,138.78, the Office found an overpayment in the amount of \$1,522.18 had been created. On January 20, 2006 the Office began deducting basic life insurance premiums only from appellant's continuing compensation.

On February 22, 2007 the Office issued a preliminary finding that an overpayment in compensation in the amount of \$1,522.18 had been created. The Office explained that the overpayment resulted because premiums for basic life insurance had not been properly deducted from appellant's wage-loss compensation for the period June 20, 1990 to January 21, 2006. Appellant was provided with an overpayment questionnaire and given instruction on appropriate responses to the preliminary finding. She was given 30 days to respond.

On March 27, 2007 the Office finalized the overpayment decision. The Office found that appellant was not at fault in the creation of the overpayment but noted that she had not responded to the preliminary overpayment finding and thus she was not entitled to waiver. The Office ordered repayment by deduction \$150.00 every four weeks from her continuing compensation.³

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 duty.⁴ When an overpayment has been made to an individual because of an error of fact or law,

¹ Appellant stopped work on March 29, 1991 and retired on disability.

² 5 U.S.C. §§ 8101-8193.

³ On appeal, appellant submitted financial information to the Board. However, as this material was not before the Office at the time of the March 27, 2007 decision, it may not be reviewed for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁵

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 the options.⁶ The coverage for basic life insurance is effective unless waived⁷ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁸ At separation from 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.⁹ 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 OPM upon discovery of the error.¹⁰ Office procedures provide that, in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage.¹¹

ANALYSIS -- ISSUE 1

The record supports that for the period June 20, 1990 to January 21, 2006 the Office either did not make deductions or made incorrect deductions for appellant's basic life insurance coverage and made inappropriate deductions for optional life insurance. Office procedures provide that, in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage.¹² The numerous computer printouts contained in the case record indicate that, while deductions were made for optional life insurance, none were made for basic life insurance. An Office computation worksheet noted that deductions for appellant's basic life insurance premiums for the period beginning January 1, 1992 to December 25, 2004 totaled \$2,138.78, but were not made from her compensation; deductions for optional life insurance were incorrectly made for the period August 23, 1992 to January 21, 2006, totaling \$448.60; and basic life insurance for the period December 26, 2004 to January 21, 2006 was entered under the incorrect code for a total overdeduction of \$168.00. By adding the overdeductions of \$448.60 and \$168.00 to equal \$616.60 and subtracting this from the underdeduction of \$2,138.78, the

⁵ 5 U.S.C. § 8129(a).

⁶ 5 U.S.C. § 8702(a); 5 C.F.R. § 870.201.

⁷ 5 U.S.C. § 8702(b); 5 C.F.R. § 870.204(a).

⁸ 5 U.S.C. § 8707.

⁹ 5 U.S.C. § 8706(b); 20 C.F.R. § 870.401.

¹⁰ 5 U.S.C. § 8707(d); *Keith H. Mapes*, 56 ECAB ____ (Docket No. 03-1747, issued October 20, 2004).

¹¹ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4(a) (August 2004).

¹² *Id.*

Board finds that the Office properly determined that an overpayment in compensation in the amount of \$1,522.18 had been created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act provides that an overpayment in compensation shall be recovered by the Office 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.”¹³ Section 10.438 of the Office regulations provides:

“(a) [T]he 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 on an overpayment would defeat the purpose of the Act or be against equity and good conscience....”¹⁴

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver....”¹⁵

ANALYSIS -- ISSUE 2

As the Office found appellant without fault in the creation of the overpayment in compensation, waiver must be considered and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.¹⁶ Appellant, however, had the responsibility to provide financial information to the Office.¹⁷

The Office clearly explained the importance of providing the requested financial information and advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. Appellant did not respond with a completed overpayment questionnaire or otherwise submit financial information supporting her income and expenses. As a result, the Office did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of the Act or if recovery would be against equity and

¹³ 5 U.S.C. § 8129.

¹⁴ 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: (a) the beneficiary from whom the Office 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. 20 C.F.R. § 10.436. Recovery 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. *Id.* at § 10.437.

¹⁵ 20 C.F.R. § 10.438.

¹⁶ *Supra* note 12.

¹⁷ *Supra* note 13.

good conscience. As appellant did not submit the financial information required under section 10.438 of the Office regulations, which was necessary to determine her eligibility for waiver, the Office properly denied waiver of recovery of the overpayment in compensation in the amount of \$1,522.18.¹⁸

LEGAL PRECEDENT -- ISSUE 3

The Office's implementing regulation 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.¹⁹

ANALYSIS -- ISSUE 3

As noted, appellant did not submit an overpayment recovery questionnaire or other financial information that the Office requested prior to the final March 27, 2007 overpayment decision. The overpaid individual is responsible for providing information about income, expenses and assets as specified by the Office.²⁰ When an individual fails to provide requested financial information, the Office should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ The Board finds that there is no evidence of record to show that a recovery rate of \$150.00 every 28 days was unreasonable. Appellant has not shown that the Office improperly required withholding \$150.00 from her continuing compensation payments every 28 days.²² While she argued that she had timely submitted the requested financial information to the Office and submitted additional evidence to the Board, the case record forwarded to the Board does not contain this material. The Board may not consider the evidence submitted with her appeal as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision.²³

CONCLUSION

The Board finds that an overpayment of \$1,522.18, occurred because the Office neglected to deduct proper premiums for basic life insurance and overdeducted premiums for optional life insurance from appellant's continuing compensation. The Board further finds that the Office properly denied waiver of the overpayment and did not abuse its discretion in setting the rate of recovery at \$150.00 each compensation period.

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.441(a).

²⁰ *Supra* note 13.

²¹ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(c)(2) (September 1994).

²² On April 6, 2007 appellant submitted an incomplete overpayment recovery questionnaire.

²³ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2007 be affirmed.

Issued: November 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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