



## **FACTUAL HISTORY**

On October 29, 1987 appellant, then a 49-year-old plumber, filed a traumatic injury claim alleging that he twisted his right knee when he carried a commode upstairs at work on October 22, 1987. The Office accepted that he sustained a right knee strain and authorized several right knee surgeries which were performed between 1988 and 1997. Appellant stopped work for various periods and received appropriate compensation from the Office. He stopped work on December 26, 1990 and retired effective June 30, 1993.<sup>1</sup>

The record contains an election form signed on July 1, 1993 which shows that appellant elected to have basic life insurance and Option C life insurance as well as various documents which suggest that premiums for life insurance coverage were not deducted for some periods between July 25, 1993 and July 9, 2005. The record also contains calculation sheets which purport to show that \$9,282.70 should have been deducted from appellant's compensation during this period for "post retirement" life insurance coverage. Other documents show that appellant received a \$2,799.58 check on July 22, 2005 and a \$3,604.38 check on December 2, 2005 from the Department of Labor as part of a retroactive reimbursement of Option B (three times pay) life insurance premiums. In a June 2, 2005 letter, an official at the Office of Personnel Management (OPM) discussed appellant's purported election of Option B (three times pay) life insurance.

In a letter dated April 6, 2006, the Office advised appellant of its preliminary determination that he received a \$15,686.66 overpayment of compensation. The Office indicated that the overpayment was created because it failed to deduct \$9,282.70 of basic life insurance and Option B life insurance premiums during the period July 25, 1993 to July 9, 2005 and because appellant incorrectly received \$6,403.96 as part of a retroactive reimbursement of Option B (three times pay) life insurance premiums. The Office also made a preliminary determination that appellant was not at fault in the creation of the overpayment and provided him with an overpayment questionnaire (Form OWCP-20) to be completed with details of his financial situation and returned within 30 days.

In a May 9, 2006 decision, the Office finalized its preliminary overpayment determination finding that appellant received a \$15,686.66 overpayment of compensation and that the overpayment was not subject to waiver. The Office indicated that appellant had not completed and returned the overpayment questionnaire form within the requested timeframe and stated that, therefore, there was no evidence to support waiver of the overpayment. The Office indicated that the overpayment would be repaid by deducting \$300.00 from his compensation payments every 28 days.

On October 18, 2006 appellant requested a hearing before an Office hearing representative in connection with the Office's May 9, 2006 final overpayment decision. In a November 17, 2006 decision, the Office denied appellant's request for an oral hearing, indicating that there was no provision for holding an oral hearing after a final overpayment decision.

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<sup>1</sup> Appellant received schedule awards for a 43 percent permanent impairment of his right leg.

### LEGAL PRECEDENT -- ISSUE 1

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.<sup>2</sup> The coverage for basic life insurance is effective unless waived<sup>3</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>4</sup> While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.<sup>5</sup> 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.<sup>6</sup> 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 OPM upon discovery of the error.<sup>7</sup>

In reaching its determinations regarding entitlement to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>8</sup> Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."<sup>9</sup> These requirements are supported by Board precedent.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that the Office has not adequately explained its finding that appellant received a \$15,686.66 overpayment of compensation and the case should be remanded to the Office for further development of the factual evidence. As noted above, the Office is required to make findings of fact and provide clear reasoning which would allow appellant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.

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<sup>2</sup> 5 U.S.C. § 8702(a).

<sup>3</sup> 5 U.S.C. § 8702(b).

<sup>4</sup> 5 U.S.C. § 8707.

<sup>5</sup> 5 U.S.C. § 8707(b)(1).

<sup>6</sup> 5 U.S.C. § 8706(b).

<sup>7</sup> 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).

<sup>8</sup> 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>10</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

The Office indicated that the overpayment was created in part because the employing establishment failed to deduct \$9,282.70 of basic life insurance and Option B life insurance premiums during the period July 25, 1993 to July 9, 2005. However, the record contains an election form signed on July 1, 1993 which appears to show that appellant elected to have basic life insurance and Option C life insurance (rather than Option B life insurance).<sup>11</sup> Moreover, the record contains documents which suggest that premiums for life insurance coverage were not deducted for at least some periods between July 25, 1993 and July 9, 2005, but the Office did not clearly identify which documents establish that premiums were not deducted for the entire period between July 25, 1993 and July 9, 2005. The record contains calculation sheets which purport to show that \$9,282.70 should have been deducted from appellant's compensation during this period. However, the sheets generally refer to "post retirement" life insurance coverage and do not clearly identify which types of life insurance were factored into the calculations. Documents show that appellant received a \$2,799.58 check on July 22, 2005 and a \$3,604.38 check on December 2, 2005 from the Department of Labor as part of a retroactive reimbursement of Option B (three times pay) life insurance premiums. The two checks totaled up to \$6,403.96. The Office did not adequately explain why appellant was not entitled to receive this money. The Office referenced a June 2, 2005 letter of an official from OPM in justification of its finding that appellant was not entitled to receive the money. However, the meaning of the June 2, 2005 letter is vague, particularly given the lack of relevant documents of record.<sup>12</sup>

For these reasons, the case will be remanded to the Office for further development regarding of the fact and amount of the \$15,686.66 overpayment of compensation found by the Office. The Office should further explain its rationale for finding the \$15,686.66 overpayment of compensation and provide adequate documentation to support its explanation. After such development it deems necessary, the Office should issue an appropriate decision.<sup>13</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether the Office properly determined that appellant received a \$15,686.66 overpayment of compensation and the case must be remanded to the Office for further development of this matter.

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<sup>11</sup> It should be noted that this election was made around the time that appellant retired effective June 30, 1993.

<sup>12</sup> The OPM official indicated that appellant had Option B (three times pay) life insurance premiums deducted from his compensation for at least two years. The Board notes that the record does not appear to contain any original documents concerning appellant's adoption of Option B (three times pay) life insurance premiums or the deduction of such premiums from his compensation.

<sup>13</sup> Given the Board's findings, it is not necessary at this time for the Board to consider the issues relating to waiver of the overpayment, method of recovery and the denial of appellant's hearing request.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs May 9, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: September 5, 2007  
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