

On March 13, 1981 appellant elected optional life insurance Option B, one times his pay (code G0). However, the Office did not begin to deduct the optional life insurance charges until the compensation check beginning February 18, 2007. An Office computation worksheet indicates that appellant's salary for compensation purposes was \$20,994.00, which was rounded to \$21,000.00. Calculations for each year from 1981 to 2007 indicated that the total due for back payment to reinstate optional life insurance was \$3,013.92.

On April 9, 2007 the Office issued a preliminary finding that an overpayment in compensation in the amount of \$3,013.92 had been created. It explained that the overpayment resulted because premiums for optional life insurance had not been deducted from appellant's wage-loss compensation for the period July 16, 1981 through February 17, 2007. Appellant was advised that he was found to be without fault in the creation of the overpayment and that he could submit financial information in support of any request for waiver of the overpayment.

On April 17, 2007 appellant requested a pre-recoupment hearing before an Office hearing representative. He advised that he had notified the Office and the employing establishment in 1988 that his insurance was not being properly deducted. In an April 17, 2007 overpayment recovery questionnaire, appellant alleged that he used all his monthly income to cover expenses. He listed monthly expenses of \$1,600.00 in rent, \$450.00 for food, \$180.00 for clothing, \$1,545.00 for utilities and other expenses as \$600.00 and \$280.00, for a total monthly expense of \$4,455.00. Appellant indicated that he had no valuable property, no stocks or bonds and no other funds. He also indicated that he supported his wife and two sons.

On October 25, 2007 a hearing was held. Appellant stated that he reviewed the overpayment calculations and did not disagree with figures. He indicated that he was married with two children living with him. Appellant denied having any significant assets. Based on figures supplied by him, the Office hearing representative noted appellant's net household income was \$4,035.41, which was comprised of his monthly earnings of \$2,408.25 and his spouse's earnings of \$1,627.16. Appellant testified his necessary monthly living expenses were: \$1,600.00 for rent; \$520.00 for car insurance; \$188.00 average for gas and electricity; \$112.00 for water; \$26.00 for garbage collection, \$200.00 for copayments, \$450.00 for food, \$180.00 for clothing, \$1,535.00 for utilities; and \$880.00 for "other" expenses. He indicated that his utilities went up in the winter and he had automotive maintenance expenses. The Office hearing representative advised appellant that he would have to provide a specific line-item breakdown for his monthly utility cost and identify what the \$880.00 "other expenses" were. The Office hearing representative further granted appellant's request that the record remain open for 30 days to allow for additional financial documents.

Following the hearing, a packet of financial documentation was received. This included a copy of the April 17, 2007 overpayment recovery questionnaire already of record along with various receipts to show appellant's income and expenses. A copy of an April 2007 bank statement "Account Transaction History" from Washington Mutual Bank verified appellant and his spouse's income and indicated a balance of \$469.17. Receipts for gasoline, auto rentals, food, telephone, auto insurance, water bill, gas and electric bill, waste management, credit cards, automobile repair fees, automobile registration fees, rent and out of pocket medical expenses were also received.

By decision dated January 25, 2008, the Office hearing representative finalized the \$3,013.92 overpayment determination and found that appellant was not eligible for waiver of the overpayment. The hearing representative noted that the financial documentation received was consistent with appellant's testimony regarding his household income and expenses; however, appellant did not provide a breakdown of his claimed \$1,545.00 per month expense for "utilities" and did not explain what he meant by "other" expenses in the amount of \$600.00 and \$280.00. The hearing representative found that appellant was not eligible for waiver as he had not submitted convincing financial documentation to support his contention that he would not be able to meet his necessary living expenses. The hearing representative noted that the receipts submitted after the hearing were not sufficient to explain the combined \$2,425.00 in monthly unexplained expenses reported by appellant. The hearing representative found that, without a detailed breakdown of this information, the Office could not accept that this excessive, unexplained figure represented necessary monthly living expenses. The hearing representative further found that there was no evidence of detrimental reliance on appellant's part with regard to the overpayment of compensation and the evidence of record did not demonstrate that collection of the overpayment would be against equity and good conscience or would defeat the purpose of the Act.¹

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.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 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.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 At separation from the employing establishment, the FEGLI insurance will either terminate or be

¹ On February 8, 2008 the Office issued a decision directing recovery of the overpayment by deducting \$100.00 every four weeks from appellant's continuing compensation. However, as appellant filed his appeal with the Board February 7, 2008, the Board acquired jurisdiction over matters relating to the overpayment at that time. From that point forward, the Board had jurisdiction over the issue. The Office may not exercise concurrent jurisdiction over the same issue on appeal. Because the February 8, 2008 decision on recovery of the overpayment from continuing compensation pertained to the issue on appeal before the Board, the Office had no jurisdiction to issue that decision. The Office's February 8, 2008 decision is null and void. *See D.S.*, 58 ECAB ____ (Docket Nos. 06-1408 & 06-2061, issued March 1, 2007); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a). *Keith H. Mapes*, 56 ECAB 130 (2004).

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

⁵ *Id.* at § 8702(b); *id.* at § 870.204(a).

⁶ 5 U.S.C. § 8707.

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.⁷ 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.⁸ Office procedures provide that, in order to be eligible for optional life insurance, a claimant must also be enrolled in basic life insurance coverage.⁹

ANALYSIS -- ISSUE 1

The record supports that for the period July 16, 1981 through February 17, 2007 the Office did not make 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.¹⁰ The numerous computer printouts contained in the case record indicate that, while deductions were made for basic life insurance, none were made for optional life insurance. An Office computation worksheet noted that deductions for appellant's optional life insurance premiums for the period beginning July 16, 1981 through February 17, 2007 totaled \$3,013.92 but were not taken from his compensation. Appellant has not disputed this amount. The Board finds that the Office properly determined that an overpayment in compensation in the amount of \$3,013.92 had been created for the period July 16, 1981 through February 17, 2007.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹¹ An individual should always be found without fault where the overpayment resulted from Office error in the underdeduction of health benefits or life insurance premiums.¹²

If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of the Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹³

⁷ *Id.* at § 8706(b); 20 C.F.R. § 870.401.

⁸ 5 U.S.C. § 8707(d); *Keith H. Mapes, supra* note 3.

⁹ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4(a) (August 2004).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.433(a).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5.b (May 2004).

¹³ 20 C.F.R. § 10.434. *See* 5 U.S.C. § 8129(b).

Recovery will defeat the purpose of the Act if both: (a) The individual from whom recovery is sought needs substantially all of her current income (including periodic benefits under the Act) to meet current ordinary and necessary living expenses; and (b) The individual's assets do not exceed the resource base (including but not limited to cash, the value of stocks, bonds, savings accounts, mutual funds) of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. The first \$4,800.00 or more, depending on the number of claimant's dependents, is also exempted from recoupment as a necessary emergency resource. If an individual has current income or assets in excess of the allowable amount, a reasonable repayment schedule can be established over a reasonable, specified period of time. It is the individual's burden to submit evidence to show that recovery of the overpayment would cause the degree of financial hardship sufficient to justify waiver.¹⁴ 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 \$50.00.¹⁵

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.¹⁶ Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes her position for the worse.¹⁷

Section 10.438 of the regulations provide 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.¹⁸

ANALYSIS -- ISSUE 2

The fact that appellant is without fault in creating the overpayment does not mean that the Office cannot collect the overpayment. He is still required to repay the debt unless: (1) recovery of the overpayment would defeat the purpose of the Act; or (2) recovery of the overpayment would be against equity and good conscience.

In determining that he was not entitled to a waiver of the recovery of the overpayment, the Office reviewed appellant's income, expenses and assets as listed in his April 17, 2007

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004). See *Miguel A. Muniz*, 54 ECAB 217 (2002); 20 C.F.R. §§ 10.436, 10.437.

¹⁵ See Federal (FECA) Procedure Manual, *id.*; *Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

¹⁶ 20 C.F.R. § 10.437(a).

¹⁷ *Id.* at § 10.437(b).

¹⁸ *Id.* at § 10.438.

overpayment recovery questionnaire, appellant's testimony, and financial documents received into the record. Based on the figures supplied by appellant and the April 2007 bank statement, the Office found appellant's monthly household income was \$4,035.41 with no tangible assets. The Office allowed the full amount of claimed monthly expenses in the amount of \$3,276.00 for rent, car insurance, gas and electricity, water, garbage collection, copayments, food, and clothing, but found that, since appellant failed to provide a breakdown of his claimed \$1,545.00 monthly expense for "utilities" and did not explain what was meant by his "other" claimed monthly expenses in the amount of \$600.00 and \$280.00, it could not accept that the combined \$2,425.00 in monthly expenses reported by appellant were necessary monthly expenses. It is noted that appellant was provided the opportunity to explain such expenses following the prerecoupment hearing, but failed to do so. Office procedures provide that an individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁹ The Board finds that, as appellant's monthly income of \$4,035.41 exceeds his documented reasonable monthly expenses of \$3,276.00 by \$759.41, he is not entitled to waiver as he does not need substantially all of his income to meet current ordinary and necessary expenses. While appellant reported an additional \$2,425.00 in combined monthly expenses for utilities and "other" expenses, he provided no evidence to substantiate such amount. As noted, the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office.²⁰

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 July 16, 1981 through February 17, 2007. Pursuant to its regulations, the Office, therefore, properly found that recovery of the overpayment would not be against equity or good conscience.

As the evidence in this case fails to support that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion in denying a waiver of recovery of the overpayment of \$3,013.92.

CONCLUSION

The Board finds that an overpayment of \$3,013.92 occurred because the Office neglected to deduct proper premiums for optional life insurance from appellant's continuing compensation during the period July 16, 1981 through February 17, 2007. The Board further finds that the Office properly denied waiver of the overpayment.

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(3) (October 2004).

²⁰ See *supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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