

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.S., Appellant**

**and**

**U.S. POSTAL SERVICE, MANDARIN POST  
OFFICE, Jacksonville, FL, Employer**

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**Docket No. 09-1738  
Issued: April 15, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 24, 2009 appellant filed a timely appeal from the April 17 and June 11, 2009 merit decisions of the Office of Workers' Compensation Programs finding a forfeiture of compensation, an overpayment and denying waiver. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant forfeited her right to compensation on March 31, 2009 for knowingly and willingly making a false statement in connection with an application for compensation; (2) whether appellant received an overpayment of compensation in the amount of \$1,456.83 for the period April 5, 1999 through June 7, 2008 when no deductions were made for basic life insurance premiums; and (3) whether the Office abused its discretion under section 8129(a) of the Federal Employees' Compensation Act by denying waiver of the recovery of the overpayment.

## **FACTUAL HISTORY**

On February 25, 1998 appellant, then a 44-year-old city carrier, filed a traumatic injury claim alleging that on February 12, 1998 she injured her low back while moving a tub of flats. The Office accepted the claim for lumbosacral strain, a herniated nucleus pulposus at L4-5 and authorized a percutaneous discectomy, which was performed on August 16, 1999. Appellant filed a claim for wage-loss compensation beginning April 5, 1999, which the Office accepted. She was placed on the periodic rolls for temporary total disability effective May 23, 1999 and paid compensation with no deduction for basic life insurance.

Appellant submitted Office EN1032 forms dated April 3, 2001, March 30, 2002, March 29, 2003, April 7, 2004, July 11, 2005 and March 20, 2007 which reported no change in the dependency status for her son. The record contains a copy of a death certificate for appellant's son confirming his death on April 6, 2000.

On June 18, 2008 the Office informed appellant that an audit revealed that deductions for basic life insurance had not been made. Appellant was advised that \$12.00 would be deducted from future compensation checks for her basic life insurance and that she would receive a separate letter informing her as to the amount of the overpayment in her case.

On April 14, 2009 the Office of the Inspector General (OIG) of the Department of Labor notified the Office that appellant pled guilty on March 31, 2009 in U.S. District Court for the Middle District of Florida, Jacksonville Division, to violating 18 U.S.C. § 1920 and requested that her benefits be terminated. The OIG attached an indictment, a copy of the clerk's March 31, 2009 minutes and a copy of the guilty plea agreement filed on the same date. In the plea agreement, appellant pled guilty to Count Five of the indictment which charged her with making a false statement on approximately April 25, 2008 when she stated there were no changes regarding whether her dependent son was still living with her or employed when he in fact died on April 6, 2000.

In a decision dated April 17, 2009, the Office found that appellant forfeited her right to further compensation because she was convicted of fraud in the application for or receipt of benefits under the Act. It terminated compensation effective March 31, 2009, including authorization for medical treatment.

The record contains a computer worksheet and printouts dated April 20, 2009 regarding the calculation of the overpayment due to basic life insurance, as it had not been deducted from appellant's compensation payments.

In an April 29, 2009 preliminary determination, the Office found that an overpayment of compensation in the amount of \$1,456.83 had occurred, as basic life insurance had not been deducted from compensation payments for the period April 5, 1999 through June 7, 2008, for which appellant was without fault. It advised appellant of actions available to her if she believed that she should receive a waiver, including the ability to request a preredemption hearing and to submit a completed overpayment recovery questionnaire and financial evidence. The record does not contain information or evidence submitted by appellant in response to the preliminary determination of the overpayment.

By decision dated June 11, 2009, the Office finalized its preliminary overpayment determination and found that waiver of the recovery of the overpayment was not warranted. It requested repayment of the \$1,456.83 in full.

**LEGAL PRECEDENT -- ISSUE 1**

Section 8148 of the Act provides that any individual convicted of a violation of 18 U.S.C. § 1920, or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under the Act, shall forfeit, as of the date of such conviction, any entitlement to any benefit such individual would otherwise be entitled to under the Act for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129 of the Act.<sup>1</sup>

**ANALYSIS -- ISSUE 1**

The U.S. District Court for the Middle District of Florida found appellant guilty of violating 18 U.S.C. § 1920. Specifically, the court found her guilty of making a false statement in the application for and to obtain compensation under the Act. Appellant pled guilty and entered into a plea agreement on March 31, 2009. Under section 8148 of the Act, she thus forfeited any entitlement to benefits she would otherwise be entitled to under the Act for any injury occurring on or before the date of such conviction.<sup>2</sup> The Board therefore finds that appellant forfeited the right to compensation effective March 31, 2009, the date of her conviction.

**LEGAL PRECEDENT -- ISSUE 2**

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.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>1</sup> 5 U.S.C. § 8148(a); *see F.C.*, 59 ECAB \_\_\_\_ (Docket No. 07-1541, issued November 16, 2007); *Elaine M. Borghini*, 57 ECAB 549 (2006).

<sup>2</sup> *Id.*

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a). *Keith H. Mapes*, 56 ECAB 130 (2004).

or more of the options.<sup>5</sup> The coverage for basic life insurance is effective unless waived<sup>6</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>7</sup>

The Act<sup>8</sup> and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances<sup>9</sup> and may also retain the optional life insurance.<sup>10</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.<sup>11</sup> If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensation was an employee will be used to withhold premiums from his or her compensation payments.<sup>12</sup> Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The record supports that for the period April 5, 1999 through June 7, 2008 the Office did not make deductions for basic life insurance. In the absence of a specific waiver of coverage, it should have deducted the premiums. This created an overpayment of compensation.

An Office computation worksheet noted that deductions for appellant's basic life insurance premiums for the period beginning April 5, 1999 through June 7, 2008 totaled \$1,456.83 but were not taken from her compensation. Appellant has not disputed this amount. The Board finds that the Office properly determined that an overpayment in compensation in the amount of \$1,456.83 had been created for the period April 5, 1999 through June 7, 2008.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8129 of the Act<sup>14</sup> provides that an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault and when adjustment or

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<sup>5</sup> 5 U.S.C. § 8702(a); 5 C.F.R. § 870.201.

<sup>6</sup> *Id.* at § 8702(b); *Id.* at § 870.204(a).

<sup>7</sup> *Id.* at § 8707.

<sup>8</sup> 5 U.S.C. §§ 8101-8193

<sup>9</sup> 5 C.F.R. § 870.701, subpart G.

<sup>10</sup> *Id.* at § 871.201, subpart B; *id.* at § 870.201, subpart B; *id.* at § 873.203, subpart B.

<sup>11</sup> *Id.* at § 870.501.

<sup>12</sup> *Id.*

<sup>13</sup> *T.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-1604, issued March 13, 2009); *Keith H. Mapes*, *supra* note 4; *Scherri L. Stanley*, 53 ECAB 433 (2002).

<sup>14</sup> 5 U.S.C. § 8129.

recovery would defeat the purpose of the Act or would be against equity and good conscience.<sup>15</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>16</sup>

Section 10.436 of the implementing federal regulations<sup>17</sup> provide that recovery of an overpayment will defeat the purpose of the Act if recovery would cause undue hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses and outlines the specific financial circumstances under which recovery may be considered to defeat the purpose of the Act.<sup>18</sup>

Section 10.437 provides that 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.<sup>19</sup>

Section 10.438(a) provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by the Office, as this information is needed to determine whether recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>20</sup> This information would also be used to determine the repayment schedule, if necessary. Section 10.438(b) provides that failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>21</sup>

### **ANALYSIS -- ISSUE 3**

In its April 29, 2009 preliminary overpayment determination, the Office informed appellant of actions available to her if she believed that she should receive a waiver. It advised her to submit a completed overpayment recovery questionnaire, as well as submit information and evidence regarding her income and expenses, within 30 days.

Appellant did not respond. She did not submit a completed overpayment recovery questionnaire form prior to the issuance of the Office's final decision or any other financial

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<sup>15</sup> *W.P.*, 59 ECAB \_\_\_ (Docket No. 08-202, issued May 8, 2008); *Karen K. Dixon*, 56 ECAB 145 (2004).

<sup>16</sup> *R.M.*, 60 ECAB \_\_\_ (Docket No. 07-1066, issued February 6, 2009); *Wade Baker*, 54 ECAB 198 (2002).

<sup>17</sup> 20 C.F.R. § 10.436.

<sup>18</sup> *M.B.*, 60 ECAB \_\_\_ (Docket No. 09-176, issued September 23, 2009); *Keith H. Mapes*, *supra* note 4.

<sup>19</sup> 20 C.F.R. § 10.437; *see Madelyn Y. Grant*, 57 ECAB 533 (2006).

<sup>20</sup> *Id.* at § 10.438(a); *see M.B.*, *supra* note 18.

<sup>21</sup> *Id.* at § 10.438(b); *see T.S.*, 60 ECAB \_\_\_ (Docket No. 08-1604, issued March 13, 2009).

information outlining her income and expenses. As a result, there was no evidence before the Office establishing that recovery of the overpayment would defeat the purpose of the Act or would be against equity and good conscience.<sup>22</sup> As appellant failed to submit the requested information, as required by section 10.438 of the Office's regulations, she was not entitled to a waiver.<sup>23</sup> The Board finds that the Office properly denied waiver of recovery of the overpayment of compensation.

On appeal, appellant asserts that she should not be required to make repayment because the overpayment was not her fault. The fact that appellant was without fault does not preclude the Office from recovering all or part of the overpayment.<sup>24</sup> Because she failed to submit the requested financial information, appellant left the Office with no choice but to deny waiver.<sup>25</sup>

### CONCLUSION

The Board finds that appellant forfeited her right to compensation effective March 31, 2009 for knowingly and willingly making a false statement in connection with an application for and to receive compensation. The Board further finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$1,456.83, for which she was without fault, because there were no deductions for basic life insurance premiums. The Board also finds that the Office properly denied waiver of recovery of the overpayment.

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<sup>22</sup> 20 C.F.R. § 10.438(a) (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>23</sup> See *T.S.*, *supra* note 21 (the failure to submit the requested financial information within 30 days of the request shall result in denial of waiver); *Keith H. Mapes*, *supra* note 4.

<sup>24</sup> See *George A. Rodriguez*, 57 ECAB 224 (2005); see also *J.O.*, 60 ECAB \_\_\_\_ (Docket No. 09-264, issued August 10, 2009) (Office regulations provide that an error by a government entity, including the Office, which resulted in an overpayment does not relieve a claimant from liability for repayment); *L.S.*, 59 ECAB \_\_\_\_ (Docket No. 07-1961, issued February 14, 2008) (a finding that a claimant was without fault does not automatically result in waiver of the overpayment).

<sup>25</sup> See *R.W. (A.T.)*, 59 ECAB \_\_\_\_ (Docket No. 07-1845, issued December 7, 2007); *Madelyn Y. Grant*, *supra* note 19.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 11 and April 17, 2009 are affirmed.

Issued: April 15, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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