

the claim for bilateral plantar fasciitis, bilateral tarsal tunnel syndrome, bilateral shoulder impingement, displaced cervical disc disease and a subsequent depressive disorder. It paid compensation for all periods of disability.

Appellant returned to limited-duty work for six hours a day on August 30, 1999 and received partial disability compensation for the remaining two hours a day. The record reflects that on July 8, 2004 he was working 24 hours a week and was on the periodic rolls for 16 hours per week. However, the Office accepted a recurrence of total disability effective July 8, 2004. Effective September 4, 2004, appellant was placed on the daily compensation rolls and paid total disability compensation through October 2, 2004 with health and optional life insurance premiums deducted. The health benefit insurance code was listed as 591 and the optional life insurance code was listed as 976, Class G. The Office noted on its worksheet that health benefit insurance records had not been transferred. In a September 2, 2004 letter, it sent the employing establishment a letter to confirm that appellant had health benefit (HB) code 591. Both the employing establishment and appellant confirmed HB code 591. Appellant explained that the HB code 591 was correct and noted that his "wife continued her own health coverage, since our marriage in 2002."

Beginning October 3, 2004, appellant was placed on the periodic compensation rolls and received total disability compensation payments. No health insurance or optional life insurance premiums were withheld. In a November 10, 2005 letter, the Office advised the employer that it was deducting subscription charges for health benefits from appellant's compensation. It requested that the employing establishment transfer the employee's HB code 591 to it effective September 3, 2004, the date preceding the day it first began paying him for temporary total disability. A copy of the letter was sent to appellant.

In an April 26, 2007 letter to the Office of Personnel Management (OPM), appellant noted that the employing establishment did not transfer his health and life insurance premiums to the Office and his coverage was cancelled on November 1, 2005. He advised that he had been covered under his wife's plan since that date. In a May 4, 2007 letter, OPM advised appellant that it had no record of his basic federal life insurance coverage being terminated. It also noted the cost of his HB code 591.

By decision dated January 11, 2008, the Office reduced appellant's compensation effective that date finding that his actual earnings as a part-time account clerk fairly and reasonably represented his wage-earning capacity.

In a December 1, 2008 letter, appellant inquired about his health and life insurance premiums. On December 24, 2008 the Office responded that he had been in receipt of temporary total disability benefits based on a recurrence of disability on September 3, 2004 but that no health benefit or life insurance premiums had been deducted since October 3, 2004. It advised that deductions for health insurance and life insurance would be made and that it would calculate any overpayment for not having premiums deducted. In a December 29, 2008 telephone call to the Office, appellant advised that he did not want health insurance deductions but only the optional life insurance deducted. On December 21, 2008 the Office began withholding health and optional life insurance benefits from appellant's compensation benefits.

In a December 29, 2008 letter, appellant contended that he was double covered on HB code 591 before his coverage was cancelled. He provided a copy of an October 26, 2005 letter from Kaiser Permanente noting his federal health benefit coverage was terminated effective November 1, 2005. Appellant also provided a September 28, 2005 notice from the employing establishment which stated that his health benefit coverage under code number 591 had terminated effective September 30, 2005 due to being 365 days in a nonpay status.

On January 26, 2009 the Office advised appellant that he received a \$7,615.23 overpayment of compensation because premiums for health benefits and optional life insurance were not deducted from his compensation for the period October 3, 2004 to December 21, 2008. It found that appellant was at fault in creating the overpayment because he was knew or should have known that his health and life insurance premiums were not being withheld from his periodic payments. From October 3, 2004 through January 19, 2008, the Office found he should have had \$4,422.95 withheld in health insurance premiums and \$819.40 withheld in optional life insurance premiums. From January 20, 2008 through December 20, 2008 appellant should have had \$1,883.28 withheld in health insurance premiums and \$489.60 in life insurance premiums. The Office added health and life insurance premiums which should have been withheld overpayment of \$7,615.23. Appellant was informed of his right to contest the overpayment or to request waiver. He was directed to submit financial information by completing an overpayment recovery questionnaire. The Office provided copies of its worksheets.

On February 10, 2009 appellant requested that the Office make a decision on his overpayment based on the written evidence. He disagreed that an overpayment was created, the amount of the overpayment and that he was at fault in its creation. Appellant noted that he was not completing the overpayment recovery questionnaire as he did not claim waiver due to undue financial hardship. He stated that his pay stubs since October 2004 did not list any payments for health or life insurance so he had no evidence that an overpayment occurred or that the Office had made premium payments on his behalf until December 2008. Appellant stated that he was informed by OPM and Kaiser Permanente in October 2005 that his health benefit coverage was terminated and had been covered under his wife's health plan and enrolled in his own life insurance. Appellant noted that in the fall of 2008 he determined that covered under his federal health insurance plan was beneficial and inquired as to his eligibility.

In a March 16, 2009 decision, the Office finalized the overpayment of compensation in the amount of \$7,615.23. It arose because premiums for health and optional life insurance were not deducted from appellant's compensation from October 3, 2004 through December 21, 2008. The Office found that appellant was at fault in creating the overpayment as he accepted payments he knew or reasonably should have known were for incorrect amounts. It directed recovery by deducting \$200.00 every four weeks from his continuing periodic rolls payments as of April 12, 2009.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act¹ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained

¹ 5 U.S.C. §§ 8101-8193.

while in the performance of his 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.

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employee Health Benefits (FEHB) program. The regulations of the Office of Personnel Management (OPM), which administers the FEHB program, provides guidelines for registration, enrollment and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides that an employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.³

In addition 5 C.F.R. § 890.502(c) provides that an agency that withholds less than or none of the proper health benefits contributions from an individual's pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees Health Benefits Fund.⁴

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.⁵ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁶ The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM when the error is discovered.⁷

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.⁸ The coverage for basic life insurance is effective unless waived⁹ and the premiums for basic and optional life coverage are withheld from the employee's pay.¹⁰ While

² *Id.* at § 8102(a).

³ 5 C.F.R. § 890.502(a)(1).

⁴ *Id.* at § 890.502(c).

⁵ *Id.* at § 890.502(a)(1).

⁶ *Id.*

⁷ See *James Lloyd Otte*, 48 ECAB 334 (1997); *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

⁸ 5 U.S.C. § 8702(a).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

the employee is receiving compensation under the Act, deductions for insurance are withheld from the employee's compensation.¹¹ 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.¹² 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.¹³

ANALYSIS -- ISSUE 1

The record reflects that the Office failed to deduct premiums for life insurance from appellant's compensation payments for the period October 3, 2004 through December 20, 2008. From October 3, 2004 through January 19, 2008, \$819.40 in optional life insurance premiums were not deducted and, from January 20 through December 20, 2008, \$489.60 in life insurance were not deducted. In the absence of a specific waiver of coverage, the Office should have deducted the premiums. The record does not contain any waiver of coverage by appellant, who has reiterated his desire for coverage. Consequently, the failure to deduct life insurance premiums caused an overpayment in compensation in the amount of \$1,309.00. The Board will affirm the Office's March 16, 2009 decision on the issue regarding the fact and amount of overpayment for the life insurance premiums during the period October 3, 2004 through December 20, 2008.

Appellant disputes the fact and amount of the overpayment regarding his health insurance premiums from October 3, 2004 to December 20, 2008. He provided evidence that his insurance carrier cancelled his health benefit coverage on November 1, 2005 and, as of November 1, 2005 he was covered under his wife's health insurance plan. Despite the Office's requests for the employing establishment to transfer appellant's health insurance premiums there is no indication that the employer ever transferred the health premiums as requested. As noted, the Office must transfer appellant's health benefits enrollment if he is expected to be on the Office's rolls for 90 days or more and is responsible for all future health benefit actions associated with the claim.¹⁴

Furthermore, OPM regulations govern the registration and continuation of enrollment of health benefit coverage for federal employees. While appellant questioned his enrollment as of November 1, 2005, the Board notes the record contains no evidence to reflect that appellant

¹¹ *Id.* at § 8707(b)(1).

¹² *Id.* at § 8706(b).

¹³ 5 U.S.C. § 8707(d); *see Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁴ *See* Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Health Benefits Insurance*, Chapter 5.400.6(b) (August 2004).

properly followed OPM procedures to cancel his health insurance enrollment any time prior to December 20, 2008.¹⁵

The Board finds that the case is not in posture as to the fact of overpayment with regard to the health insurance premiums. There is insufficient evidence to support the Office's determination that an overpayment was created due to the nonwithholding of health insurance premiums from October 3, 2004 through December 20, 2008. On remand, the Office should obtain relevant evidence from the employing establishment and OPM documenting when appellant was covered by health insurance and whether he ever elected to cancel his enrollment through OPM. After conducting such further development as it deems necessary, the Office shall issue an appropriate decision regarding any overpayment that may have occurred due to the nondeduction of health insurance premiums.¹⁶

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation during the period October 3, 2004 through December 20, 2008 in the amount of \$1,309.00 for underwithholding of life insurance premiums. The case is not in posture for a decision regarding whether appellant received an overpayment during the entire period October 3, 2004 through December 20, 2008 for underwithholding of health insurance premiums, whether appellant was at fault in creating any overpayment and recovery of the overpayment from continuing compensation benefits.

¹⁵ It is important to note that, if appellant did not elect to cancel his enrollment in the FEHB program, he may be responsible for health benefits premium paid by the Office. However, neither the Office nor the Board has jurisdiction to determine an employee's coverage or the amount of deductions made under the FEHB program, as those matters are within the jurisdiction of OPM. See *Leticia C. Taylor*, 47 ECAB 198 (1995).

¹⁶ In view of the Board's disposition on the amount of the overpayment, it is premature to address the Office's finding that appellant was at fault in creating the overpayment under 20 C.F.R. § 10.433(a)(3) since a change in the amount of the overpayment may impact a fault finding under that standard. Furthermore, it is premature to address the repayment issue due to the disposition of the first issue.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part for further action consistent with this decision.

Issued: June 11, 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