



periodic rolls on June 9, 2004. Appellant returned to part-time work on September 27, 2004. She stopped work on December 10, 2004. Appellant returned to part-time work on January 12, 2006.

Appellant's attending physician found that she was totally disabled on March 19, 2007. Appellant filed a claim for compensation on March 22, 2007 requesting wage-loss compensation from March 19 through 30, 2007. Her earnings and leave statement indicated that she was enrolled in optional life insurance code BC at \$24.15 a pay period as of March 17, 2007. The Office authorized compensation benefits for March 19 through April 14, 2007, but did not make a deduction for optional life insurance. It entered appellant on the periodic rolls on April 16, 2007 but did not include a deduction for optional life insurance. Appellant married on May 6, 2008 and the Office increased her compensation benefits to the augmented rate, but did not include optional life insurance deductions.

Appellant completed a continuation of life insurance coverage on October 6, 2008 for basic life insurance, but not Option A standard optional insurance. Beginning April 12, 2009, the Office withheld optional life insurance premiums. It calculated the amount of payment for optional life insurance from March 19, 2007 through April 11, 2009.

On August 3, 2009 the Office made a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,405.50 for the period March 19, 2007 through April 11, 2009 because premiums for optional life insurance were not deducted from her benefits. It calculated the overpayment as follows: for Option B, \$47,000.00 multiplied by .09 equaling 4.23 or 8.46 biweekly, then multiplied by 5 = \$42.30, then multiplied by 27, 28 day pay periods, equals \$1,142.10. Option A for the period March 19, 2007 through April 11, 2009 resulted in \$.90 multiplied by 2 to reach the biweekly cost of \$1.80, which was then multiplied by 27, 28-day pay periods, to equal \$48.60. Option C for the period March 20, 2005 through January 21, 2006 equaled \$.60 multiplied by 2 to reach the biweekly amount of \$1.20 which was then multiplied by 4 to reach \$4.80 and then multiplied by 11, 28-day pay periods, to reach \$52.80. Options C for the period March 19, 2007 through April 11, 2009 resulted in \$.60 multiplied by 2 to reach the biweekly amount of \$1.20 which was multiplied by 5 to equal \$6.00 which was then multiplied by 27, 28-day pay periods, to reach \$162.00. The sum of these amounts total \$1,405.50. Appellant was informed of her review options if she wished to challenge the overpayment or to request waiver of recovery of the overpayment. If she sought waiver of the overpayment, she was directed to submit, within 30 days, financial information by completing an overpayment recovery questionnaire.

Appellant requested that the Office make a decision based on the written evidence and submitted an overpayment recovery questionnaire on August 14, 2009. She did not list any monthly income and her monthly expenses were \$420.00 for rent, \$400.00 for food, \$100.00 for clothing and \$400.00 for utilities. Appellant also listed \$350.00 in miscellaneous expenses. She listed debts with monthly payments totaling \$833.00. Appellant stated that her checking account balance was \$175.00.

By decision dated September 14, 2009, the Office finalized the overpayment compensation in the amount of \$1,405.50 for which appellant was not at fault. It denied waiver of recovery of the overpayment, finding that the overpayment recovery questionnaire was not

properly completed as appellant did not provide her monthly income. The Office requested full payment within 30 days and stated if this was not received the employer would be asked to offset her salary.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation 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 his duty.<sup>1</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>2</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 or more of the options.<sup>3</sup> The coverage for basic life insurance is effective unless waived<sup>4</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>5</sup> When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because the Office must pay the full premium to the Office of Personnel Management upon discovery of the error.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

There is no dispute about the fact or amount of the overpayment. Appellant sustained an injury in the performance of duty on March 31, 2004 and received compensation for her disability. Although she had authorized deductions for basic life insurance and optional life insurance, the Office failed to deduct any premiums from her compensation for optional life insurance coverage. This error caused an overpayment of compensation. It provided a worksheet showing the amount of the various premiums for optional life insurance that should have been deducted. This amount totaled \$1,405.50. The Board will affirm the September 14, 2009 decision on the issues of fact and amount of overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of the Act provides that when an overpayment of compensation occurs "because of an error of fact of law," adjustment or recovery shall be made by decreasing later

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Id.* at § 8129(a).

<sup>3</sup> *Id.* at § 8702(a).

<sup>4</sup> *Id.* at § 8702(b).

<sup>5</sup> *Id.* at § 8707.

<sup>6</sup> *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

payment to which the individual is entitled.<sup>7</sup> The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b):

“Adjustment or recovery by the United States may not be made when 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.”

A finding that the employee was without fault is not sufficient, in and of itself, for the Office to waive the overpayment. The Office must 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,” pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations<sup>8</sup> provide that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) the beneficiary from whom the Office seeks recovery needs substantially all of her current income, including compensation benefits, to meet current ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed the resource base of \$4,800.00 for an individual.<sup>9</sup> 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. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00).<sup>10</sup>

Recovery of an overpayment is 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.<sup>11</sup> Conversion of the overpayment into a different form, such as food, consumer goods, real estate, *etc.*, from which the claimant derived some benefit, is not to be considered a loss.<sup>12</sup>

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

The Office found that appellant was without fault in the creation of the overpayment. It informed her that she needed to explain her reasons for seeking waiver, complete a recovery

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<sup>7</sup> *Id.* at § 8129(a).

<sup>8</sup> 20 C.F.R. § 10.436.

<sup>9</sup> *Id.* at § 10.436; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (October 2004).

<sup>10</sup> *Id.*

<sup>11</sup> 20 C.F.R. § 10.437(b).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.b(3) (October 2004).

questionnaire form and submit financial documents to support her claimed income and expenses. It advised her to submit her response within 30 days.

The overpayment recovery questionnaire is designed to obtain the financial information to determine whether adjustment or recovery would defeat the purpose of the Act. Appellant did not fully complete the overpayment recovery questionnaire provided by the Office or otherwise submit financial documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Although appellant is without fault in the creation of the overpayment, she nevertheless bears responsibility for providing the financial information necessary to support a request to waive recovery of the overpayment. Section 10.438 of the regulations state that a claimant who received an overpayment is responsible for providing information about income, expenses and assets to the Office so that it may determine whether recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.<sup>13</sup> Failure to submit the information, which will also be used to determine a repayment schedule if necessary, within 30 days of a request from the Office, will result in a denial of a waiver of recovery of the overpayment and no further requests for waiver will be considered until the information is submitted.<sup>14</sup>

Appellant did not submit the necessary financial evidence in this case to establish 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 waiver of recovery of the overpayment.

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

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. Section 10.441(a) of the regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If 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.”<sup>15</sup>

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

The Board finds that the Office properly directed repayment by requesting refund of the entire amount of the overpayment. On August 3, 2009 the Office advised appellant of her right

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<sup>13</sup> 20 C.F.R. § 10.148.

<sup>14</sup> *Id.* at § 10.438(b); *Robert B. Hutchins*, 52 ECAB 344 (2001).

<sup>15</sup> *Id.* at § 10.441.

to request a hearing or telephone conference regarding its preliminary determination that an overpayment had occurred and that, if she wished a waiver of recovery of the overpayment, she was specifically directed to submit financial information. As noted, appellant did not respond or submit any financial documentation. The Board finds that the Office properly considered her circumstance as represented by the record and requested repayment in full.

**CONCLUSION**

The Board finds that the Office properly determined that appellant received a \$1,405.50 overpayment of compensation during the period March 19, 2007 through April 11, 2009. The Office properly denied waiver and requested repayment of the entire amount.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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