

sudden back pain. The Office accepted his claim for aggravation of spinal enthesopathy and spondyloarthropathy.¹

On March 27, 2009 the Office issued a preliminary determination appellant was without fault with regard to the creation of a \$6,336.87 overpayment of compensation that occurred during the period July 15, 2007 to March 14, 2009. The overpayment occurred because the Office of Personnel Management (OPM) deducted postretirement basic life insurance premiums based on an annual pay rate of \$96,286.00 rather than the \$100,996.00 correct pay rate. Appellant received compensation of \$123,607.66 from July 15, 2007 to March 14, 2009 but was only entitled to \$117,270.79, a difference of \$6,336.87. He was advised to submit evidence or argument if he disagreed with the fact or amount of the overpayment or if he wished to request a waiver of recovery of the overpayment. The Office asked appellant to submit a completed copy of an enclosed overpayment recovery questionnaire and attach supporting financial documentation of income and expenses, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records which supported the income and expenses listed. It would review the financial documentation and, if appellant was unable to pay the full amount, the Office could determine a fair repayment method. The Office advised that failure to submit the requested financial information within 30 days would result in the denial of waiver and no further request for waiver would be considered until the requested information was furnished.

On April 2, 2009 appellant advised the Office that he disagreed with the preliminary overpayment determination. He submitted no financial information.

By final decision dated June 2, 2009, the Office determined that an overpayment of \$6,336.87 occurred because OPM deducted postretirement basic life insurance premiums based on an incorrect pay rate. Appellant received compensation of \$123,607.66 from July 15, 2007 to March 14, 2009 but was only entitled to \$117,270.79, a difference of \$6,336.87. The Office found that he was without fault in the creation of the overpayment because he was not or could not have been aware that he was not entitled to the payments received. It found that the circumstances in appellant's case did not warrant waiver of recovery of the overpayment. Appellant requested waiver of recovery of the overpayment but failed to provide supporting financial documents such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and any other records supporting the income and expenses listed, as requested by the Office. The Office determined that \$300.00 would be withheld each month from appellant's continuing compensation benefits until the overpayment was recovered.

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 duty.² When an overpayment has been made to an individual

¹ Appellant has a concurrent accepted condition under OWCP File No. xxxxxx147, a rupture of the left patellar tendon, sustained on February 10, 2006. Following surgery on March 16, 2006, he was released to work without restrictions on June 19, 2006.

² 5 U.S.C. §§ 8101-8193, 8102(a).

because of error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor be decreasing later payments to which the employee is entitled.³

Under the Federal Employees' Group Life Insurance Program (FEGLI), most federal employees are eligible to participate in basic life insurance and one or more of the optional insurance plans.⁴ The coverage of basic life insurance is effective unless waived⁵ and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.⁶ At separation from federal employment, the FEGLI insurance will either terminate or continue 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 the employee's compensation payments.⁷ When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay full premium to the Office of Personnel Management upon discovery of the error.⁸

ANALYSIS -- ISSUE 1

In the June 2, 2009 decision, the Office properly calculated that the overpayment amount in this case was \$6,336.87 based on copies of payment printouts and worksheets which showed that OPM deducted post-retirement basic life insurance premiums based on an annual pay rate of \$96,286.00 rather than the \$100,996.00 correct pay rate. Appellant received compensation of \$123,607.66 from July 15, 2007 to March 14, 2009 but was only entitled to \$117,270.79, a difference of \$6,336.87. The Board finds that the Office properly found an overpayment of \$6,336.87.

LEGAL PRECEDENT -- ISSUE 2

Under section 8129 of the Act and the implementing regulations, an overpayment must be recovered unless 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.⁹ Section 10.433 of the implementing regulations provide that the Office may consider waiving an overpayment if the individual to whom it was made was not at fault in

³ 5 U.S.C. § 8129(a).

⁴ *Id.* at § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *Id.* at § 8706(b).

⁸ *Id.* at § 8707(d); *Keith H. Mapes*, 56 ECAB 130, 133 (2004).

⁹ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

accepting or creating the overpayment.¹⁰ Section 10.434 provides that, if the Office finds the recipient of an overpayment was not at fault, repayment will be required unless:

“(a) Adjustment or recovery of the overpayment would defeat the purpose of the [Act], or

“(b) Adjustment or recovery of the overpayment would be against equity and good conscience.”¹¹

These terms are further defined in sections 10.436 and 10.437. Section 10.436 provides that recovery would defeat the purpose of the Act if the beneficiary needs substantially all of his current income to meet current ordinary and necessary living expenses and the beneficiary’s assets do not exceed a specified amount as determined by the Office. Section 10.437 provides that a recovery of an overpayment would be against equity and good conscience when an individual would experience severe financial hardship in attempting to repay the debt or when any individual in reliance in such payments gives up a valuable right or changes his or her position for the worse.¹²

The individual who received the overpayment is responsible for providing information concerning income, expenses and assets as specified by the Office.¹³ 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.¹⁴ This information will also be used to determine the repayment schedule, if necessary.¹⁵ Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is provided.¹⁶

¹⁰ 20 C.F.R. § 10.433(a).

¹¹ *Id.* at § 10.434. Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents. *Id.* at § 10.436. 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. *Id.* at § 10.437(a). 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 his or her position for the worse. *Id.* at § 10.437(b).

¹² 20 C.F.R. § 10.437.

¹³ *Id.* at § 10.438(a).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 2

The record establishes that appellant received an overpayment of \$6,336.87 because OPM failed to deduct the correct amount for his postretirement basic life insurance premiums during the period July 15, 2007 to March 14, 2009. The Office determined that he was without fault in the creation of the overpayment because he had no notice or knowledge that OPM was not deducting correct life insurance premiums. Therefore, the issue is whether the Office properly denied waiver of recovery of the \$6,366.87 overpayment. Although appellant was without fault in creating the \$6,336.87 overpayment, he nonetheless bears responsibility for providing the financial information necessary to support his request for waiver.¹⁷ He failed to submit financial information to the Office. Because appellant failed to submit the requested financial documentation, he left the Office no choice but to deny his request for waiver. The Board will affirm the Office's June 2, 2009 decision on the issue of waiver.¹⁸

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an employee who is entitled to further payments, the employee shall refund to the Office the amount of the overpayment as soon as the error is discovered or the employee's attention is called to the matter. 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 employee and any other relevant factors, so as to minimize any hardship.¹⁹

ANALYSIS -- ISSUE 3

The Office determined that \$300.00 a month would be withheld from appellant's continuing compensation until the overpayment was recovered. Because appellant failed to submit the requested financial documentation, the Office did not abuse its discretion in determining to withhold \$300.00 a month from his continuing compensation. The Board will affirm the Office's June 2, 2009 decision on the issue of rate of recovery.²⁰

CONCLUSION

The Board finds that the Office properly determined that a \$6,336.87 overpayment occurred in appellant's case and properly denied waiver of recovery of the overpayment. The Board further finds that the Office did not abuse its discretion in directing the Office to recover the overpayment by withholding \$300.00 a month from appellant's continuing compensation benefits.

¹⁷ *Madelyn Y. Grant*, 57 ECAB 533, 537 (2006).

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.441(a).

²⁰ The Board has jurisdiction to review the issue of recovery of an overpayment in those cases where the Office seeks recovery from continuing compensation benefits. See *Desiderio Martinez*, 55 ECAB 245, 251 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2009 is affirmed.

Issued: September 13, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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