

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

D.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 10-972
Issued: January 11, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 23, 2010 appellant filed a timely appeal from the November 30, 2009 merit decision of the Office of Workers' Compensation Programs concerning an overpayment of compensation. 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 received a \$9,475.34 overpayment of compensation for the period November 16, 2002 to May 9, 2009; (2) whether the Office abused its discretion by refusing to waive recovery of the overpayment; and (3) whether the Office properly required repayment of the overpayment by deducting \$200.00 from appellant's compensation payments every four weeks.

FACTUAL HISTORY

The Office accepted that on October 2, 2002 appellant, then a 44-year-old letter carrier, sustained a right arm laceration/contusion, right knee contusion and multiple other contusions

when she was physically attacked by a postal customer. Her claim was subsequently accepted for post-traumatic stress disorder. Appellant stopped work on October 1, 2002 and received continuation of pay through November 15, 2002. Her last pay status with the employing establishment was November 15, 2002 and the Office paid compensation for temporary total disability beginning November 16, 2002. Effective November 10, 2008, appellant was approved for disability retirement and separated from the postal service. She elected to receive benefits under the Federal Employees' Compensation Act.¹

On May 11, 2009 the Office received an April 29, 2009 document from the Office of Personnel Management (OPM) indicating that effective November 16, 2002 appellant elected coverage of basic life insurance and postretirement life insurance.

In a May 19, 2009 notice, the Office advised appellant of its preliminary determination that she received a \$9,475.34 overpayment of compensation from November 16, 2002 to May 9, 2009 due to its failure to deduct basic life insurance and postretirement life insurance premiums from the compensation she received. It determined that she was not at fault in the creation of the overpayment. The Office advised appellant that she could submit evidence challenging the fact or amount of overpayment or request waiver. It informed her that she could submit additional evidence in writing or at precoupment hearing. The Office requested that appellant complete and return an enclosed financial information questionnaire within 30 days. It attached compensation printouts and a worksheet which showed how the basic life insurance and postretirement life insurance premiums were underwithheld for the period November 16, 2002 to May 9, 2009. Regarding the creation of the overpayment, the Office stated:

“Per OPM’s form, you elected Federal Employee’s Group Life Insurance (FEGLI) coverage as noted below. By review of your compensation history, it was noted that since November 16, 2002 the Office has withheld Basic Life Insurance at an annual salary rate of \$43,401.80 and has not withheld premiums for Post Retirement Basic Life.

“OPM has informed the Office that the final salary for basic life coverage withholding should be \$52,749.00 per annum. You have also elected Post Retirement Basic Life coverage at a “no reduction” rate. OPM has informed the Office that the effective date of withholding for premium coverage(s) should be November 16, 2002. Since the final salary for basic life coverage is higher than the rate has been withheld, and since the Office has not deducted premiums for Post Retirement Basic Life as you have elected, an overpayment of compensation has been realized due to undersubscribed Basic Life and Post-Retirement Life Insurance coverage(s).”

Appellant requested a telephonic precoupment hearing with an Office hearing representative. During the hearing held on September 8, 2009, the Office hearing representative

¹ Appellant continues to receive compensation on the periodic rolls.

asked appellant a series of detailed questions regarding her finances.² Appellant's counsel argued that the OPM did not have authority to deduct premiums from her compensation as she was not retired as of November 16, 2002. Counsel also contended that appellant detrimentally relied on the overpayment monies in that she made payments for her son's education and moved to a more affluent neighborhood in reliance on them. After the hearing, she submitted documents concerning her pay status and monthly expenses.

In a November 30, 2009 decision, an Office hearing representative affirmed that appellant received a \$9,475.34 overpayment of compensation. She found that appellant was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver. In describing how the overpayment was created, the Office hearing representative indicated that no probative evidence had been presented to establish that the figures and dates provided by OPM concerning appellant's elected coverage were incorrect. She noted that appellant had argued that the deduction obligations were improper because active postal employees are entitled to basic life insurance at no charge and she was not separated from the employing establishment until 2008. The Office hearing representative noted, however, that appellant had not actually been in an active pay status with the employing establishment since November 16, 2002. Because the employing establishment was no longer covering the cost, the Office deducted basic life insurance from her compensation benefits as required. Appellant argued that it was unlawful to base her premiums on the current final salary, but Office procedure provided that premiums were to be based on the an annum salary of the claimant at retirement.³

The Office hearing representative discussed appellant's financial situation and determined that she had about \$2,415.00 in monthly income comprised of wage-loss compensation benefits.⁴ Appellant had previously reported \$1,660.00 in monthly expenses comprised of mortgage/rent, food, clothing, utilities, medical expenses, credit car debt, car insurance and telephone expenses. The Office hearing representative found that the evidence submitted documented that appellant had underreported her monthly utility costs by \$75.00, but did not establish that she had a current car insurance obligation of \$150.00. Appellant was found to have monthly expenses of about \$1,585.00. Her income exceeded monthly expenses by about \$830.00. Recovery of the overpayment would not cause severe financial hardship as monthly income exceeded monthly expenses by well over \$50.00. The Office hearing representative denied appellant's claim that she detrimentally relied on the overpayment monies as no evidence was submitted to show that she paid her son's tuition or moved to a more expensive neighborhood in reliance on them. There was no documentation to support that appellant carried any current personal debt in relation to her son's tuition and the financial information presented did not support an inability to maintain her current residence with her current income level. Thus, it is not found that recovery of the debt would be against equity and good conscience. The

² Appellant had completed the financial information questionnaire on June 5, 2009. She listed monthly income of \$2,230.00 and monthly expenses of \$1,600.00. Appellant questioned the validity and amount of the insurance premium deductions that the Office indicated should have been made and requested waiver of the overpayment.

³ See Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401, Exhibit 1 (August 2004).

⁴ Appellant submitted a bank account statement showing a negative balance and it was determined that she did not have any assets.

Office hearing representative indicated that appellant's financial situation, including the fact that she received continuing compensation payments, showed that the overpayment could be recovered at a rate of \$200.00 every four weeks.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of the Federal Employees' Compensation Act⁵ 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 her duty.⁶ Section 8129(a) of the Act provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”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 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 “compensationeer” status. If the compensationeer 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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Id.* at § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8702(a).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

¹¹ *Id.* at § 8707(b)(1).

¹² *Id.* at § 8706(b).

¹³ *Id.* at § 8707(d); see *James Lloyd Otte*, 48 ECAB 334 (1997).

ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$9,475.34 overpayment of compensation for the period November 16, 2002 to May 9, 2009. In the present case, the record contains an OPM document establishing that effective November 16, 2002 appellant elected coverage of basic life insurance and postretirement life insurance. The Office underwithheld premiums in the amount of \$9,475.34 for the period November 16, 2002 to May 9, 2009. Compensation printouts and a worksheet provide a detailed calculation of how basic life insurance and postretirement life insurance premiums were underwithheld.

On appeal, appellant contends that an overpayment should not have occurred because OPM did not have authority to make deductions of the premiums in question. She argued that the deduction obligations were improper because active postal employees are entitled to basic life insurance at no charge and she was not separated from the employing establishment until 2008. The Board notes, however, that appellant had not actually been in an active pay status with the employing establishment since November 16, 2002. Because the employing establishment was no longer covering the cost, the Office deducted basic life from her compensation benefits as required.¹⁴ For these reasons, the evidence establishes that appellant received a \$9,475.34 overpayment by the underdeduction of insurance premium.

LEGAL PRECEDENT -- ISSUE 2

The waiver or refusal to waive an overpayment of compensation by the Office is a matter that rests within the Office's discretion pursuant to statutory guidelines.¹⁵ These statutory guidelines are found in section 8129(b) of the Act which states: "Adjustment or recovery [of an overpayment] 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 this subchapter or would be against equity and good conscience."¹⁶ If the Office finds a claimant to be without fault in the matter of an overpayment, then, in accordance with section 8129(b), the Office may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.

According to 20 C.F.R. § 10.436, recovery of an overpayment would defeat the purpose of the Act if recovery would cause hardship because the beneficiary needs substantially all of her income (including compensation benefits) to meet current ordinary and necessary living

¹⁴ Appellant claimed that it was improper to base her premiums on her current final salary, but Office procedure provides that premiums are based on the per annum salary of the claimant at retirement. *See supra* note 3.

¹⁵ *See Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁶ 5 U.S.C. § 8129(b).

expenses, and also, if the beneficiary's assets do not exceed a specified amount as determined by the Office from data provided by the Bureau of Labor Statistics.¹⁷ According to 20 C.F.R. § 10.437, 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 her position for the worse.¹⁸ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁹

ANALYSIS -- ISSUE 2

Appellant has not established that recovery of the overpayment would defeat the purpose of the Act because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. The record reflects that she has monthly income of about \$2,415.00 and monthly expenses of about \$1,585.00 and therefore her monthly income exceeds her monthly ordinary and necessary expenses by about \$830.00.²⁰ As appellant's current income exceeds her current ordinary and necessary living expenses by more than \$50.00 she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.²¹ Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of the Act, it is not necessary for the Office to consider the second prong of the test, *i.e.*, whether appellant's assets do not exceed the allowable resource base.

¹⁷ 20 C.F.R. § 10.436. An individual is deemed to need substantially all of her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245 (2004). Office procedure provides that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

¹⁸ 20 C.F.R. § 10.437(a), (b).

¹⁹ *Id.* at § 10.437(b)(1).

²⁰ The Office hearing representative provided a discussion of appellant's claimed monthly expenses and determined whether they were established by the submitted documentation. Appellant had previously reported \$1,660.00 in monthly expenses but it was found that the submitted documentation actually showed that she had underreported her monthly utility costs by \$75.00. She had not shown that she had a current car insurance obligation of \$150.00.

²¹ *See supra* note 17.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.²² The Office hearing representative properly denied her claim that she detrimentally relied on the overpayment monies as no evidence was submitted to show that she paid her son's tuition or moved to a more expensive neighborhood in reliance on them.²³

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, she has failed to show that the Office abused its discretion by refusing to waive the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provide in pertinent part:

“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 the 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.”²⁴

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$200.00 from appellant's compensation payments every four weeks, the Office took into consideration the financial information submitted by her as well as the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on her.²⁵ Therefore, the Office properly required repayment of the overpayment by deducting \$200.00 from appellant's compensation payments every four weeks.

CONCLUSION

The Board finds that appellant received a \$9,475.34 overpayment of compensation for the period November 16, 2002 to May 9, 2009. The Board further finds that the Office did not abuse

²² See *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²³ The Office hearing representative indicated that there was no documentation to support that appellant carried any current personal debt in relation to her son's tuition and the financial information presented did not support an inability to maintain her current residence with her current income level.

²⁴ 20 C.F.R. § 10.441(a); see *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁵ On appeal, appellant argued that she could not repay the overpayment at a rate of \$200.00 every four weeks. However, the record reflects that her monthly income exceeds her monthly expenses by about \$830.00.

its discretion by refusing to waive recovery of the overpayment and the Office properly required repayment of the overpayment by deducting \$200.00 from appellant's compensation payments every four weeks.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2011
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