U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

In the Matter of MARGARET BARTHER and DEPARTMENT OF THE ARMY, WALSON ARMY COMMUNITY HOSPITAL, Fort Dix, NJ

*Docket No. 02-484; Submitted on the Record; Issued September 22, 2003*

## DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant received an overpayment of $1,383.11 in compensation from January 24, 1990 to April 21, 2001 because the Office of Workers' Compensation Programs deducted no premiums for her basic life insurance coverage.

On February 22, 1987 appellant, then a 50-year-old food service worker, sustained an injury at work when she slipped and fell on ice while leaving the hospital. The Office accepted her claim for contusion to the head, cerebral concussion, postconcussion syndrome, dysthymic disorder, syncopal attacks and flexion-extension spinal injury.

Appellant stopped work on February 22, 1987. After returning to work on March 17, 1987, she lost time intermittently. On September 25, 1989 she stopped work and did not return. The record shows that she commenced receiving compensation benefits on or before December 31, 1989.

When it received medical evidence that she was totally disabled and would not return to work, the Office placed appellant on the periodic compensation rolls. On March 29, 1990 the Office advised appellant as follows: "Until further notice, you will be paid compensation under the conditions set forth in this letter. If you have basic life insurance (FEGLI) [Federal Employees' Group Life Insurance], coverage will continue at no cost to you."[1] Beginning January 24, 1990, the Office made payments of compensation with deductions only for optional life insurance.

Appellant had basic life insurance coverage at that time. On August 18, 1972, May 6, 1976 and March 11, 1981 she elected regular or basic life insurance and declined any form of

[1] For claimants injured before January 1, 1990, as in this case, basic life insurance continues at no cost to the employee while he or she is receiving compensation, unless the employee has elected postretirement basic life withholdings at 100 percent or 50 percent of the original value. Claimants injured on or after January 1, 1990 must pay for basic life insurance. U.S. Department of Labor, Publication CA-810, Chapter 7.4.J (revised January 1999).

optional insurance. On June 25, 1985 she elected basic life plus family optional insurance. The election became effective and payroll deductions began on August 4, 1985.

Appellant was continuously covered under the FEGLI program from May 9, 1976 to December 9, 1994. Effective December 9, 1994 she was separated from employment under a reduction-in-force. She continued her FEGLI coverage as a compensationer.[2] The Office again paid compensation with deductions only for optional life insurance.

On January 31, 2001 appellant elected postretirement basic life insurance coverage after the age of 65.[3] She chose the 50 percent reduction and authorized deductions to be made from her annuity or compensation to pay the full cost of the additional protection.

On February 23, 2001 a benefit specialist at the Office of Personnel Management (OPM) advised the Office that appellant was eligible to continue her FEGLI coverage. The specialist noted appellant's final base salary on which FEGLI was based, appellant's election of basic life plus family optional insurance and appellant's election of postretirement coverage with a 50 percent reduction. The specialist advised: "Commencing date for the postretirement deductions is October 8, 1990. Basic and optional coverage premiums begin on the OWCP commencing date."

The Office prepared a memorandum on April 6, 2001 for computing deductions for basic life and postretirement basis life insurance. For the basic life computation, the Office stated: "The biweekly rates effective after April 25, 1999 are $0.155 per thousand. (Note that this [is] only deducted for claims with a date of injury after January 1, 1990.)" Based on appellant's total final salary for life insurance deductions, the Office determined that the biweekly premium for basic life was $4.34, or $8.68 for 28 days. The Office deducted this premium from appellant's compensation beginning with the compensation check for the period March 25 to April 21, 2001.

Following procedures set forth in FECA Bulletin No. 94-3 (issued October 1, 1993), the Office calculated the premium rate for basic life insurance as far back as January 1, 1990, adjusting for rate changes in 1993 and 1999. Applying these rates to appellant's compensation payments from January 24, 1990 to April 21, 2001, the Office determined that it overpaid appellant $1,383.11 in compensation.

On June 21, 2001 the Office made a preliminary determination that appellant received an overpayment of $1,383.11 in compensation from January 24, 1990 to April 21, 2001. The overpayment arose because, according to OPM, appellant's basic life coverage premiums should have been made from the first date she was placed on compensation, but the Office made no deductions for basic life during the period in question. The Office determined that appellant was without fault in the creation of the overpayment. The Office requested that she complete an

[2] Following separation, a compensationer's basic life insurance continues if she has been insured for the five years of service immediately before the date of entitlement to compensation and has not converted to an individual policy. 5 C.F.R. § 870.701(b).

[3] After age 65, the only life insurance premiums that must be withheld from continuing compensation benefits are for postretirement basic life insurance coverage. These withholdings continue for the life of the enrollee. FECA Bulletin No. 94-3 (issued October 1, 1993). Appellant would turn 65 on October 30, 2001.

overpayment recovery questionnaire and submit financial documentation of her income and expenses within 30 days.

In a decision dated July 25, 2001, the Office finalized its preliminary determination and found that appellant received an overpayment of $1,383.11 in compensation. The Office finalized its determination that appellant was without fault in the matter and denied waiver of the overpayment because she submitted no evidence or argument for waiver within the 30 days provided. Effective August 11, 2001, the Office began withholding $265.05 from appellant's continuing compensation payments to recover the overpayment found, with interest, by about December 29, 2001.

The Board finds that the evidence in this case is insufficient to establish that appellant received an overpayment of $1,383.11 in compensation from January 24, 1990 to April 21, 2001 because the Office deducted no premiums for her basic life insurance coverage.

Whenever life insurance continues while the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance shall be withheld from the employee's annuity or compensation. Insurance shall be so continued without cost to the employee, however, if the employee commenced receiving compensation on or before December 31, 1989.[4]

When the Office placed appellant on the periodic compensation rolls, it notified her on March 29, 1990 that her basic life insurance coverage would continue "at no cost to you." This representation appears consistent with federal law[5] and the Office's published handbook on the federal workers' compensation program.[6] Appellant was injured before January 1, 1990. She commenced receiving compensation on or before December 31, 1989. It therefore appears that her basic life insurance should have continued at no cost to her while she received compensation.[7]

After an OPM benefit specialist advised that basic and optional coverage premiums "begin on the OWCP commencing date," the Office prepared a memorandum on April 6, 2001 for computing deductions for basic life and postretirement basis life insurance. In doing so, however, the Office noted that basic life premiums are "only deducted for claims with a date of injury after January 1, 1990." Notwithstanding appellant's February 22, 1987 date of injury, the Office determined that it should have deducted $1,383.11 in basic life insurance premiums from appellant's compensation payments from January 24, 1990 to April 21, 2001. As it made no such deductions, the Office found that appellant received an overpayment in compensation.

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[4] 5 U.S.C. § 8707(b) (at no cost other than as provided under section 8706(b)(3)(B), relating to postretirement basic life insurance coverage).

[5] *Id*.

[6] *Supra* note 1; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.0812.11 (July 1993) (noting that basic coverage may continue without cost to the employee while receiving compensation and the Office holds that the employee is unable to return to duty).

[7] Withholdings for the basic life insurance coverage are normally made until the enrollee reached age 65. *See supra* note 3.

While it is true the Office deducted no premiums for appellant's basic life insurance coverage from January 24, 1990 to March 25, 2001,[8] the Board is not persuaded that the Office should have made such deductions in appellant's case. The only evidence in the record to support a deduction of premiums for basic life insurance is the February 23, 2001 letter from the OPM benefit specialist, but this specialist did not acknowledge appellant's date of injury or first receipt of compensation and referenced no authority to support the deduction of basic coverage premiums in this particular case. In light of the legal authority and Office procedures discussed earlier, this letter is insufficient to establish that the Office should have deducted premiums for basic life. The Board finds, therefore, that the Office has not met its burden of proof to establish that an overpayment of compensation occurred as alleged.[9]

The July 25, 2001 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
September 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

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[8] The Office deducted this premium beginning with the compensation check for the period March 25 to April 21, 2001.

[9] *See Robert D. Short*, 44 ECAB 354 (1993) (the Office did not meet its burden to establish fact of overpayment). Given this finding, the Board need not address such overpayment issues as fault, waiver and rate of recovery or assessment of interest.