

neck sprain and dislocation, lumbosacral sprain and right knee sprain. She received compensation for temporary total disability on the periodic rolls.

On April 30, 2004 the Office made a preliminary finding that appellant received an overpayment of \$1,227.28 because it neglected to deduct basic life insurance premiums from June 24, 1994 through January 24, 2004. The Office found that she was not at fault in the matter, making her eligible for waiver. The Office asked appellant to complete and return an enclosed overpayment recovery questionnaire together with supporting documents, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips and other records, to support the income and expenses shown on the questionnaire. It stated:

“This information will help us decide whether or not to waive the overpayment. If waiver is not granted, the information will be used to decide how to collect the overpayment. We will not try to collect the overpayment until we reach a final decision on your request for waiver.

“Also please note that under 20 C.F.R. § 10.438, we will deny waiver if you fail to furnish the information requested on the enclosed Form OWCP-20 (or other information we need to address a request for waiver) within 30 days. We will not consider any further request for waiver until the requested information is furnished.”

In a decision dated June 24, 2004, the Office finalized its preliminary findings and denied waiver on the grounds that appellant failed to respond to the April 30, 2004 request for financial information. The Office determined that recovery should be made by withholding \$300.00 from continuing compensation beginning July 10, 2004, absorbing the overpayment by approximately October 30, 2004.

LEGAL PRECEDENT -- ISSUE 1

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.¹

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the federal government are eligible to participate in basic life insurance and one or more of the options.² The coverage for basic life insurance is effective unless waived³ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁴ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an

¹ 5 U.S.C. § 8129(a); *see* 20 C.F.R. §§ 10.430-.441 (1999) (federal regulations).

² 5 U.S.C. § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

overpayment of compensation because the Office must pay the full premium to the Office Personnel Management (OPM) upon discovery of the error.⁵

ANALYSIS -- ISSUE 1

Appellant does not contest the Office's finding that she received an overpayment of \$1,227.28 in compensation from June 24, 1994 through January 24, 2004. As there is no evidence she waived coverage for basic life insurance, such coverage was effective and the Office should have deducted premiums from her compensation. When the Office neglected to do so, she received an overpayment. The Office did not begin deducting premiums until periodic roll payments began again on January 25, 2004.

The Board has reviewed the Office's calculations and finds that it properly multiplied appellant's adjusted salary in thousands by the appropriate weekly premium rates and the number of weeks covered by each effective rate (rates fell slightly in 1999 and 2003). The Board will, therefore, affirm the Office June 24, 2004 decision on the issues of fact and amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

The Office may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.⁶ If the Office finds that the recipient of an overpayment was not at fault, repayment will still be required unless (1) adjustment or recovery of the overpayment would defeat the purpose of the Federal Employees' Compensation Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁷

The individual who received the overpayment is responsible, however, for providing information about income, expenses and assets as specified by the Office. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.⁸

⁵ *Id.* at § 8707(d); see *James Lloyd Otte*, 48 ECAB 334 (1997).

⁶ 20 C.F.R. § 10.433(a) (1999).

⁷ *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).

⁸ *Id.* at § 10.438(a).

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 furnished.⁹

ANALYSIS -- ISSUE 2

Although appellant was found to be without fault in the creation of the overpayment, she is nonetheless responsible for providing the financial information necessary for the Office to consider waiver. On April 30, 2004 the Office requested that she complete an enclosed overpayment recovery questionnaire and provide documents to support the income and expenses reported. The Office properly notified appellant of the purpose and importance of this request and of the consequences of failing to furnish the information requested. Because she did not respond, the Office was required under the regulation to deny waiver.¹⁰ The Board will affirm the Office's June 24, 2004 decision on the issue of waiver.

LEGAL PRECEDENT -- ISSUE 3

Whenever 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.¹¹

ANALYSIS -- ISSUE 3

In establishing the initial collection strategy, the Office must weigh the individual's income, ordinary and necessary expenses and assets in a manner similar to the waiver considerations above.¹² When, as in this case, an individual fails to provide requested information on income, expenses and assets, the Office should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹³ The Office properly followed those guidelines in the present case by setting a rate of recovery close to 11 percent of appellant's net compensation. The Board will affirm the Office's June 24, 2004 decision on the issue of rate of recovery.

⁹ *Id.* at § 10.438(b).

¹⁰ *Id.*

¹¹ *Id.* at § 10.441(a).

¹² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4.d(1)(a) (September 1994); *see supra* note 7.

¹³ *Gail M. Roe*, 47 ECAB 268 (1995); *see id.* at Chapter 6.0200.4.d(1)(b).

CONCLUSION

Appellant received an overpayment of \$1,227.28 in compensation from June 24, 1994 through January 24, 2004. The Office properly denied waiver of this overpayment based on appellant's failure to submit the necessary and requested financial information. The Office also properly followed established guidelines in setting the rate of recovery from continuing compensation.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member