

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

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**GERALD R. JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, OAKLAWN POST  
OFFICE, Texarkana, TX, Employer**

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**Docket No. 05-911  
Issued: July 6, 2005**

*Appearances:*  
*Gerald R. Johnson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On March 9, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 3, 2005 merit decision finding that he received a \$651.30 overpayment of compensation that was not subject to waiver and determined the rate of recovery of the overpayment at \$150.00 every 28 days from continuing compensation payments. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received a \$651.30 overpayment of compensation during the period October 6, 2002 to January 22, 2005; (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 \$150.00 from appellant's compensation payments every 28 days.

## **FACTUAL HISTORY**

On January 22, 1988 appellant, a 54-year-old city mail carrier, filed a traumatic injury claim alleging that he reinjured his back when he fell while delivering mail on January 9, 1988. The Office accepted the claim for lumbar strain and aggravation of lumbar degenerative disc disease and appellant was placed on the periodic rolls for partial disability.<sup>1</sup>

In a letter dated April 1, 2004, the Office of Personnel Management (OPM) informed the Office that appellant “had elected Basic Life Insurance with a 50 percent reduction and Option A coverage at the time of retirement” and that premiums should have commenced September 24, 2002.

The record contains computer printouts of appellant’s compensation payments which detailed that appellant paid nothing for optional life insurance during the period October 6, 2002 to January 25, 2005. The record reflects that appellant currently receives \$1,581.44 in net compensation. The Office also attached a calculation worksheet which showed that appellant owed a total of \$105.30 for the period October 6, 2002 to January 25, 2003 and \$546.00 total for the period January 26, 2003 to January 22, 2005 for unpaid optional life insurance.

By letter dated January 4, 2005, the Office advised appellant of its preliminary determination that he received a \$651.30 overpayment of compensation during the period October 6, 2002 to January 22, 2005 because optional life insurance premiums were not deducted from his compensation. The Office further indicated that it made a preliminary determination that he was not at fault in the creation of the overpayment. It provided appellant an opportunity to request waiver of the overpayment and directed him to complete an attached overpayment questionnaire regarding his financial circumstances. The Office advised appellant that it would deny waiver of the overpayment if he failed to submit the requested financial information within 30 days.

In a letter dated January 20, 2005, appellant requested waiver and refused to supply any financial information on the grounds that it violated the Privacy Act.

By decision dated February 3, 2005, the Office finalized its preliminary determination that appellant received a \$651.30 overpayment of compensation during the period October 6, 2002 to January 22, 2005 because optional life insurance premiums were not deducted from his compensation. The Office found that, although appellant was not at fault in the creation of the overpayment, he was not entitled to waiver because he did not submit the requested financial information or otherwise show that waiver of recovery was warranted. The Office determined that the \$651.30 overpayment should be recovered by deducting \$150.00 from appellant’s continuing compensation payments every 28 days.

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<sup>1</sup> Appellant accepted a modified-duty position beginning November 11, 1995 working two hours per day five days per week. A loss of wage-earning capacity was issued on December 18, 1995. On May 31, 1996 he filed a claim for a recurrence of disability beginning May 22, 1996. The Office denied appellant’s recurrence claim in decisions dated August 22, 1996, December 22, 1997, January 7, 1999 and June 23, 2000. Appellant appealed to the Board and the Board affirmed the Office’s denial of appellant’s recurrence claim on January 25, 2002 (Docket No. 00-2541).

## LEGAL PRECEDENT -- ISSUE 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.<sup>2</sup> The coverage for basic life insurance is effective unless waived,<sup>3</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>4</sup> Upon separation from the employing establishment, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>5</sup> Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,<sup>6</sup> however, the employee is responsible for payment of premiums for optional insurance coverage and coverage without reduction, which is accomplished by authorizing withholdings from his compensation.<sup>7</sup> When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to the OPM upon discovery of the error.<sup>8</sup>

## ANALYSIS -- ISSUE 1

The record shows that appellant had optional life insurance coverage during the period October 6, 2002 to January 22, 2005 and that he was required to pay for premiums during this period. The record contains an April 1, 2004 letter from OPM stating appellant "had elected Basic Life Insurance with a 50 percent reduction and Option A coverage at the time of retirement" and premiums should have commenced September 24, 2002. The Board finds that the failure of the Office to deduct optional life insurance premiums during this period therefore created an overpayment of compensation. The record also shows that the Office properly calculated the amount of premiums that should have been deducted during the period October 6, 2002 to January 22, 2005. Computer printouts of appellant's compensation payments detail the cost of optional life insurance premiums during the period October 6, 2002 to January 22, 2005 and show that such premiums were not deducted from appellant's compensation payments during this period. A calculation sheet shows that overpayment figures were calculated for the period October 6, 2002 to January 22, 2005 and that the total for this period was \$651.30. The

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<sup>2</sup> 5 U.S.C. § 8702(a).

<sup>3</sup> 5 U.S.C. § 8702(b).

<sup>4</sup> 5 U.S.C. § 8707.

<sup>5</sup> 5 U.S.C. § 8706.

<sup>6</sup> 5 U.S.C. § 8707(b)(2).

<sup>7</sup> 5 U.S.C. § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

<sup>8</sup> 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB \_\_\_\_ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

Office computed this amount based on the fact that appellant owed optional life insurance premiums of \$105.30 for the period October 6, 2002 to January 25, 2003 and \$546.00 for the period January 26, 2003 to January 22, 2005, which added together equals \$651.30 for unpaid optional life insurance. Therefore, the Board finds that the evidence shows that appellant received a \$651.30 overpayment of compensation during the period October 6, 2002 to January 22, 2005.

### **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.<sup>9</sup> 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."<sup>10</sup> Since the Office found appellant to be without fault in the matter of the 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.<sup>11</sup>

Section 10.436 of the Office's regulation<sup>12</sup> provides that recovery of an overpayment would defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) [t]he 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) [t]he beneficiary's assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics.<sup>13</sup> An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed expenses by more than \$50.00.<sup>14</sup>

Section 10.437 provides that 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

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<sup>9</sup> See *Desiderio Martinez*, 55 ECAB \_\_\_\_ (Docket No. 03-2100, issued January 9, 2004); *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>10</sup> 5 U.S.C. § 8129(b); see *Lawrence J. Dubuque*, 55 ECAB \_\_\_\_ (Docket No. 04-437, issued August 26, 2004).

<sup>11</sup> *Keith H. Mapes*, *supra* note 8.

<sup>12</sup> 20 C.F.R. § 10.436.

<sup>13</sup> See *Otto A. Fernandez*, 55 ECAB \_\_\_\_ (Docket No. 03-1942, issued May 27, 2004).

<sup>14</sup> See *Duane C. Rawlings*, 55 ECAB \_\_\_\_ (Docket No. 02-2172, issued March 8, 2004). *Leticia C. Taylor*, 47 ECAB 198, 203 (1995).

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.<sup>15</sup>

Section 20 C.F.R. § 10.438 states:

“(a) The individual who received the overpayment is responsible 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.

“(b) 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.”

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

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of the Act because he has not shown both that he needs substantially all of his current income to meet ordinary and necessary living expenses and that his assets do not exceed the allowable resource base. Appellant also has not established that recovery of the overpayment would be against equity and good conscience because he has not shown that he would experience severe financial hardship in attempting to repay the debt or that he relinquished a valuable right or changed his position for the worse in reliance on the payment which created the overpayment.<sup>16</sup>

Although appellant was provided with the opportunity, he submitted no financial evidence. In a letter dated January 20, 2005, appellant requested waiver and refused to submit financial information on the grounds that it violates the Privacy Act. Absent evidence documenting appellant's financial status, the Office is required by the regulations to deny appellant's request for waiver.<sup>17</sup> Since the record contained no financial evidence and appellant refused to supply financial information, the Office was mandated by section 10.438(b) of the Office's regulations to deny waiver of the overpayment. Accordingly, the Office properly determined that appellant was not entitled to a waiver of the overpayment in this case.

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<sup>15</sup> 20 C.F.R. § 10.437. The standard for determining whether an individual would experience severe financial hardship attempting to repay the debt is the same for determining whether recovery would defeat the purpose of the Act. See *Keith H. Mapes*, *supra* note 8.

<sup>16</sup> *Desiderio Martinez*, 55 ECAB \_\_\_\_ (Docket No. 03-2100, issued January 9, 2004).

<sup>17</sup> *Keith H. Mapes*, *supra* note 8 (financial information is need to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience).

**LEGAL PRECEDENT -- ISSUE 3**

Section 10.441(a) of Title 20 of the Code of Federal Regulations provides 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.”<sup>18</sup>

**ANALYSIS -- ISSUE 3**

The record supports that, in requiring repayment of the overpayment by deducting \$150.00 from appellant’s compensation payments every 28 days, the Office took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. The record reflects that appellant receives continuing compensation in the amount of \$1,581.44 per month and then determined a repayment of 150.00 every 28 days, would be appropriate. Since appellant did not submit any financial data, there is no information of record which would show that this method of recovery is improper under the relevant standards.<sup>19</sup> The Board finds that appellant therefore had not shown that the Office abused its discretion in withholding \$150.00 every 28 days from his continuing compensation payments.

**CONCLUSION**

The Board finds that appellant received a \$651.30 overpayment of compensation during the period October 6, 2002 to January 22, 2005. The Board further finds that the Office did not abuse its discretion by refusing to waive recovery of the overpayment and that the Office properly required repayment of the overpayment by deducting \$150.00 from appellant’s continuing compensation payments every four weeks.

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<sup>18</sup> 20 C.F.R. § 10.441(a); see *Ralph P. Beachum*, 55 ECAB \_\_\_\_ (Docket No. 03-2142, issued April 1, 2004).

<sup>19</sup> See *Ralph P. Beachum*, 55 ECAB \_\_\_\_ (Docket No. 03-2142, issued April 1, 2004). The Office’s method of recovery would be consistent with the general guidelines found in Office procedure. See Federal (FECA) Procedure Manual, Part 6 -- *Debt Management*, Chapter 6.200.4(d)(1)(b) (May 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 3, 2005 is affirmed.

Issued: July 6, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member