

FACTUAL HISTORY

On February 8, 1993 appellant, then a 38-year-old technician, filed a traumatic injury claim alleging that he sustained a back injury at work on that date. The Office accepted appellant's claim for lumbar strain and paid compensation for various periods of disability.¹

By letter dated August 13, 2004, the Office advised appellant of its preliminary determination that he received a \$1,133.03 overpayment of compensation during the period May 27, 1993 to August 9, 2003 because mandatory basic 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.

The Office attached computer printouts of appellant's compensation payments which detailed the varying cost of basic life insurance premiums during the period May 27, 1993 to August 9, 2003 and which showed that such premiums were not deducted from appellant's compensation payments during this period. It also attached a calculation sheet which showed that overpayment amounts were calculated for various sub periods during the period May 27, 1993 to August 9, 2003 due to the fact that the cost of basic life insurance premiums changed over time and that the total of these sub periods was \$1,133.03. For the period May 27, 1993 to April 24, 1999 the Office failed to deduct \$631.62 for basic life insurance premiums; for the period April 25, 1999 to January 25, 2003 it failed to deduct \$440.51; and for the period January 26 to August 9, 2003 it failed to deduct \$60.90.

By decision dated September 16, 2004, the Office finalized its determination that appellant received a \$1,133.03 overpayment of compensation during the period May 27, 1993 to August 9, 2003 because mandatory basic 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 noted that appellant received continuing compensation of \$1,835.00 per month and determined that the \$1,133.03 overpayment should be recovered by deducting \$184.00 from appellant's compensation payments every 28 days.

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

¹ Appellant periodically returned to limited-duty work for the employing establishment and received partial disability compensation during these periods. He received total disability compensation for periods he was not able to work.

more of the options.² The coverage for basic life insurance is effective unless waived,³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴ When an underholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation to appellant because the Office must pay the full premium to Office of Personnel Management upon discovery of the error.⁵

ANALYSIS -- ISSUE 1

The Board notes that the record shows that appellant had basic life insurance coverage during the period May 27, 1993 to August 9, 2003 and that he was required to pay for premiums during this period. Coverage for basic life insurance is effective unless waived and there is no evidence showing that appellant waived coverage during the period May 27, 1993 to August 9, 2003.⁶ The failure of the Office to deduct basic 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 May 27, 1993 to August 9, 2003. Computer printouts of appellant's compensation payments detail the varying cost of basic life insurance premiums during the period May 27, 1993 to August 9, 2003 and show that such premiums were not deducted from appellant's compensation payments during this period. A calculation sheet which shows that overpayment figures were calculated for various sub periods during the period May 27, 1993 to August 9, 2003 and that the total of these sub periods was \$1,133.03. Therefore, the evidence shows that appellant received a \$1,133.03 overpayment of compensation during the period May 27, 1993 to August 9, 2003.

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.⁷ 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."⁸ 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

² 5 U.S.C. § 8702(a).

³ 5 U.S.C. § 8702(b).

⁴ 5 U.S.C. § 8707.

⁵ 5 U.S.C. § 8707(d).

⁶ Moreover, the record contains personnel documents from the mid to late 1990s showing that appellant had basic life insurance coverage.

⁷ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

⁸ 5 U.S.C. § 8129(b).

overpayment would neither defeat the purpose of the Act nor be against equity and good conscience.⁹

Section 10.436 of the Office's regulation¹⁰ 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.¹¹ 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 \$50.00.¹²

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 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.¹³

ANALYSIS -- ISSUE 2

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.¹⁴

⁹ Appellant argued that the overpayment should be waived because he was not found to be at fault in its creation but he would only be entitled to such waiver if it were shown, under the standards described below, that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience.

¹⁰ 20 C.F.R. § 10.436 (1999).

¹¹ An individual's assets must exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment; *see Robert F. Kenney*, 42 ECAB 297, 301 (1991).

¹² *See Leticia C. Taylor*, 47 ECAB 198, 203 (1995).

¹³ 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.

¹⁴ *See William J. Murphy*, 41 ECAB 569, 571-72 (1989).

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.”

Although appellant was provided with the opportunity, he submitted no financial evidence to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. Appellant was apprised of the need to submit such financial information. There is a presumption that a letter properly addressed and mailed in the ordinary course of business is presumed to have arrived at the mailing address in due course.¹⁵ The August 13, 2004 preliminary overpayment letter listed appellant’s proper address and, because there is no evidence to show it was not properly mailed, it is presumed that it arrived at appellant’s mailing address. Absent evidence documenting appellant’s financial status, the Office cannot determine that appellant is entitled to waiver and waiver cannot be granted.¹⁶ 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, he has failed to show that the Office abused its discretion by refusing to waive the overpayment. Accordingly, the Office properly determined that appellant was not entitled to a waiver of the overpayment in this case.

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.”¹⁷

¹⁵ *Marlon G. Massey*, 49 ECAB 650, 652 (1998).

¹⁶ *Id.*

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

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$184.00 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 Office noted that appellant received continuing compensation of \$1,835.00 per month and then determined that a payment of 10 percent of that amount, *i.e.*, \$184.00 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.¹⁸ Appellant therefore had not shown that the Office abused its discretion in withholding \$184.00 every 28 days from his continuing compensation payments.

CONCLUSION

The Board finds that appellant received a \$1,133.03 overpayment of compensation during the period May 27, 1993 to August 9, 2003. 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 \$184.00 from appellant's compensation payments every four weeks.

¹⁸ See *Ralph P. Beachum, Sr.*, 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) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member