



claim for myocardial infarction and an aggravation of a preexisting condition and he was placed on the periodic rolls.<sup>1</sup> He has not worked since June 11, 1980.

Appellant signed a life insurance election form authorizing deductions for basic life insurance coverage with no reduction, to be effective June 23, 1981. In fact, no deductions were made for basic life insurance from August 13, 1981 to May 15, 2004.<sup>2</sup>

On May 4, 2001 appellant notified the Department of Labor that his monthly benefit statement did not reflect a deduction for his life insurance coverage. On July 7, 2004 the Office made a preliminary finding that, due to no fault on his part, appellant had been overpaid benefits in the amount of \$22,064.44.<sup>3</sup>

Appellant requested a waiver of the overpayment. In support of his request, he contended that repayment of the debt would cause him financial hardship and that he would have managed his finances differently had he known he was required to pay premiums. He stated that, in addition to his compensation benefit, he receives social security in the amount of \$728.00 per month, dividends and interest from savings in the amount of \$134.00 per month, and that his wife receives retirement income of \$248.00 per month. He submitted a mutual fund statement reflecting a balance of \$36,461.42 and several bank statements, the most recent of which reflected a balance of \$5,070.52. Appellant provided a July 7, 2004 credit card statement indicating a balance of \$2,171.00 and available credit of \$17,511.00. His overpayment recovery questionnaire revealed that his monthly expenses for credit card, mortgage, food, clothing and utilities were \$1,362.00. Appellant noted an automobile loan in the amount of \$6,858.00, with a corresponding monthly payment of \$700.00. He provided a figure of \$2,100.00 for "other" monthly expenses, for "total monthly expenses" of \$4,262.00. Appellant indicated that he loaned his son \$2,000.00 in April 2004.

The record reflects that appellant receives compensation benefits in the net amount of \$4,213.90 per month.

In a decision dated August 9, 2004, the Office finalized its preliminary findings on the fact and amount of overpayment. The Office found that, although appellant was without fault,

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<sup>1</sup> It must be noted that the file does not contain a copy of the notice of occupational disease claim form. The evidence of record relating to appellant's claim prior to May 6, 1986 consists of two letters dated July 31, 1980 seeking additional information. The information stated herein regarding the June 26, 1980 occupational claim form was obtained from an accepted statement of facts dated May 6, 1986.

<sup>2</sup> The record contains a case history reflecting payments to and withholdings from appellant's account covering the period August 13, 1981 through May 15, 2004.

<sup>3</sup> The record reflects that the first overpayment period began on August 13, 1981. The Office's August 9, 2004 final decision finding appellant had received an overpayment in the amount of \$22,064.44 and denying waiver correctly states the beginning of the first overpayment period as August 13, 1981.

The Office's calculations as delineated on its worksheet dated May 26, 2004 and the July 7, 2004 preliminary finding incorrectly reflect overpayment from August 31, 1981 through May 15, 2004. There is an apparent typographical error on the July 7, 2004 preliminary finding reflecting a period of overpayment from December 18, 1977 to April 24, 1999, before appellant was receiving compensation benefits. The typographical errors do not affect the amount of the overpayment and, therefore, the error is harmless.

the circumstances of his case did not warrant waiver. The Office advised that the overpayment would be recovered at the rate of \$400.00 per month with interest accruing at the rate of one per cent until the debt is absorbed on December 20, 2008.<sup>4</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act<sup>5</sup> 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 his duty.<sup>6</sup> 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.<sup>7</sup>

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>8</sup> The coverage for basic life insurance is effective unless waived<sup>9</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>10</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>11</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>12</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>13</sup> When an underwithholding of life insurance

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<sup>4</sup> The Board notes that appellant submitted additional evidence after the Office rendered its August 9, 2004 decision. As this evidence was not previously considered by the Office prior to its decision of August 9, 2004, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

<sup>5</sup> 5 U.S.C. §§ 8101 *et seq.*

<sup>6</sup> *See id.* at § 8102(a).

<sup>7</sup> *See id.* at § 8129(a).

<sup>8</sup> *See id.* at § 8702(a).

<sup>9</sup> *See id.* at § 8702(b).

<sup>10</sup> *See id.* at § 8707.

<sup>11</sup> *See id.* at § 8706(b).

<sup>12</sup> *See id.* at § 8707(b)(2).

<sup>13</sup> *See id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022, 1024 (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).

premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to the Office of Personnel Management upon discovery of the error.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office properly determined that appellant received an overpayment of compensation due to the lack of deduction for basic life insurance premiums with no reduction from August 13, 1981 to May 15, 2004. However, the amount of overpayment is in question.

Appellant sustained an injury in the performance of duty on June 11, 1980 and received compensation for his disability. Because appellant began receiving compensation before December 31, 1989, federal regulations provided that his basic insurance coverage be continued without cost. However, appellant was responsible for the additional cost associated with his election for a basic policy with no reduction. Although he had authorized deductions for basic life insurance with no reduction,<sup>15</sup> the Office deducted no premiums from his compensation. This error created an overpayment of compensation to appellant. The Office should have deducted premiums for basic life insurance with no reduction when compensation for the employment injury first began.

The record contains an overpayment worksheet dated May 26, 2004. However, the correct amount of overpayment is unclear from the Office's calculations. The Office should have deducted from appellant's compensation payment an amount equal to the difference between the cost of the premium for basic life with no reduction and that for basic life. Therefore, if the cost for basic life insurance coverage was \$78.75 per month and the cost for basic life alone was \$23.00, then the amount of \$55.75 should have been withheld from appellant's monthly compensation payment. The calculation worksheet reflects the Office's determination that there should have been withholdings of \$72.90 per pay period August 13, 1981 to December 17, 1988;<sup>16</sup> \$70.20 per pay period December 18, 1988 to April 24, 1999;

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<sup>14</sup> 5 U.S.C. § 8707(d); *see also Keith H. Maples*, 56 ECAB \_\_\_\_ (Docket No. 03-1747, issued October 20, 2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>15</sup> Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989. 5 U.S.C. § 8707(b)(2). 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. 5 U.S.C. § 8706(b)(3)(B). *See supra* note 13.

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under the Act could elect continuous withholdings from his compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no insurance; basic coverage subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; basic coverage subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65.

<sup>16</sup> *See supra* note 3.

\$84.60 per pay period April 25, 1999 to January 25, 2003; and \$76.50 per pay period January 26, 2003 to May 15, 2004. But the Office did not explain the basis for its determination. Thus, it is impossible for the Board to ascertain the correct amount of overpayment. The Board will set aside the August 9, 2004 decision on the amount of the overpayment and remand the case to the Office for a proper analysis and explanation of its calculation of overpayment.<sup>17</sup>

### CONCLUSION

The Board finds that an overpayment occurred from August 13, 1981 to May 15, 2004, when the Office neglected to deduct premiums for basic life insurance with no reduction from appellant's compensation. Given that the amount of overpayment is in question, the Board further finds that the case is not in posture for a decision on the issues of waiver and recovery of overpayment.

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<sup>17</sup> Pursuant to the office's regulations in effect at the time appellant began receiving compensation benefits, an insured compensationner who elected to continue basic life insurance coverage with no reductions during receipt of compensation benefits was required to have withheld from his payments withholdings at the weekly rate of \$0.404 for each \$1,000.00 of BIA. In the instant case, withholdings for appellant's \$45,000.00 policy would have been \$78.78 per month. (See § 870.401(f)(3) (1980)). An insured compensationner who elected to continue basic life insurance coverage with a maximum reduction of 75 percent after age 65, was required to have withheld from his payments withholdings at the weekly rate of \$0.12 for each \$1,000.00 of BIA. Withholdings for a \$45,000 policy would have been \$23.40 per month. (See § 870.401(f)(1) (1980)). Because basic life insurance withholdings did not apply to appellant because he began receiving compensation payments before January 1, 1990, he was responsible for the difference between \$78.78 and \$23.40, or \$55.38 per month, at the time he commenced receiving compensation payments.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed with regard to the fact of the overpayment; the decision is set aside for further development consistent with this decision with regard to the issues of amount, waiver and recovery of the overpayment.

Issued: March 16, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member