

FACTUAL HISTORY

On May 26, 1999 appellant, then a 49-year-old postmaster, filed a claim alleging that her emotional condition was a result of her federal employment. The Office accepted as factual and compensable that she worked 10 to 12 hours a day and weekends due to understaffing and trying to meet the demands of her job. It found no other compensable factors of employment. The Office accepted appellant's claim for depression and paid compensation for temporary total disability on the periodic rolls.¹

On July 17, 2007 appellant notified the Office that it was no longer deducting life insurance premiums from her compensation. She stated that she was eligible for life insurance coverage and asked the Office to deduct premiums accordingly. The record showed that appellant had basic and optional life insurance coverage and that the Office deducted premiums through July 7, 2006.² But for the one-year period from July 8, 2006 through July 7, 2007, the Office paid compensation to appellant without deducting premiums. It calculated that it should have deducted \$265.93 for basic and \$2,446.80 for optional life insurance during this period.

On August 3, 2007 the Office issued a preliminary determination that appellant received a \$2,654.90 overpayment in compensation from July 8, 2006 through July 7, 2007 because of an undersubscription of basic and optional life insurance premiums. It determined that she was not at fault in creating the overpayment. The Office asked appellant to complete and submit the attached overpayment recovery questionnaire and warned that failure to submit the requested information within 30 days would result in a denial of waiver.

In a decision dated September 13, 2007, the Office finalized its preliminary determination that appellant received a \$2,654.90 overpayment. It denied waiver and noted that appellant failed to complete and submit the overpayment recovery questionnaire.

Earlier, the Office found that a conflict existed between appellant's psychologist and an Office referral psychiatrist on whether appellant had any residual emotional condition causally related to the one compensable factor of employment. It referred appellant, together with the entire case file and a statement of accepted facts, to Dr. Thomas G. Gratzer, a Board-certified psychiatrist, for an impartial medical evaluation.

On January 23, 2006 Dr. Gratzer related appellant's social and medical history, the history of her employment injury and her subsequent medical treatment. He reviewed the medical evidence, including the reports of her psychologist and the Office referral psychiatrist. Dr. Gratzer described his findings on mental status examination and made a principal diagnosis of depressive disorder, not otherwise specified, and anxiety disorder, not otherwise specified. He explained why appellant's presentation and history made it difficult to attribute her ongoing

¹ The Office's December 1, 2000 acceptance letter accepted depression, but a June 22, 2007 statement of accepted facts indicates that the Office accepted major depression with psychotic features.

² The Office was deducting \$208.10 every 28 days, or \$20.40 for basic and \$187.70 for optional life insurance.

fluctuating symptomatology to a diagnosis of major depression. Dr. Gratzner then addressed whether she had residuals of the accepted employment injury:

“While [appellant’s] presentation is atypical and highly suggestive of secondary gain and personality disorder dynamics, it is fairly clear that her psychiatric difficulties are not related to stresses associated with the identified compensable work factor. It is my understanding that the only compensable work factor was the fact that she worked long hours due to staff shortages prior to the development of her condition. Even [appellant] indicated that this was not a significant stressor affecting her presentation. Rather, she indicated that the harassment and persecution she experienced at the [employing establishment] were principal stressors affecting her. Specifically, [appellant] indicated that she felt demoralized and demeaned by her work environment. She felt harassed and discriminated against in the workplace. [Appellant] believed her supervisor ... was setting her up for failure. In that regard, she believes he deliberately understaffed her offices, particularly with respect to managerial staff. [Appellant] believes she was placed under intense scrutiny. This included being audited and receiving letters of warning. [Appellant] indicated that she ultimately received an unacceptable performance rating. She attributed the harassment and discrimination to retaliation in relation to the EEO [Equal Employment Opportunity] complaint. [Appellant] indicated that she felt devastated when she found that her office had been sealed and a replacement had been obtained. She felt she was being treated like a criminal. According to the [s]tatement of [a]ccepted [f]acts, these were not compensable factors.”

Dr. Gratzner explained how the opinion of appellant’s psychologist was not consistent with the history appellant provided during her current evaluation, and he noted that the stressor of extensive work hours was not referenced in the treatment records he reviewed. He added:

“It is also not plausible that working 60 [to] 70 hours per week would result in [appellant’s] current presentation. Appellant reported persecution and harassment during the time she worked at the [employing establishment] and after leaving the [employing establishment]. She filed an EEO complaint in that regard. By self-report, it was the harassment and persecution at work that caused [appellant] to leave her work environment on January 3, 1998. She indicated that ongoing harassment and persecution after leaving the [employing establishment] continued to exacerbate her depressive and anxiety symptoms. [Appellant’s] self-report in that regard is supported by treatment records.... Consistent with this, she attributed her hysteria during the current psychiatric evaluation to this ongoing harassment and persecution by the [employing establishment] and not her past history of working long hours. It is also not plausible that working long hours in 1996 or 1997 would be a significant stressor affecting [appellant] at the present. Many individuals work long hours at work, and working long hours at work is separate from persecution and harassment.”

Dr. Gratzner concluded that appellant did not have a residual work-related emotional condition that prevented her from performing her postmaster duties or any other type of work.

He reported that she required no further psychiatric or psychological treatment for a work-related psychiatric condition, as she did not have a work-related psychiatric condition based on compensable work factors. He noted:

“[Appellant’s] presentation on clinical evaluation and psychological testing were notable for gross exaggeration. [She], however, indicated that her presentation on clinical evaluation did not reflect her baseline. [Appellant] indicated that she can function fairly well in other circumstances when she is not reminded of the [employing establishment]. Her self-report is not consistent with a major mental illness associated with psychiatric impairment. If [appellant] were disabled on the basis of her depressive and anxiety symptoms, the depressive and anxiety symptoms would be continuous and chronic, and she would be psychiatrically impaired across settings not just when reminded of the [employing establishment]. Her exaggerated presentation during the interview reflects deep seated anger towards the [employing establishment], ongoing power struggle with Workers’ Compensation, perceptions of ongoing harassment, and other secondary gain issues. These dynamics are separate from a major mental illness or a psychiatric impairment. In my opinion, [appellant] does not have a major mental illness that would prevent [her] from returning to the work at the post office as of the January 13, 2006 evaluation.”

Appellant submitted an April 17, 2006 supplemental report from her psychologist, who expressed some disagreement and concerns with Dr. Gratzer’s conclusions.

In a decision dated July 7, 2006, the Office terminated appellant’s compensation. On April 30, 2007 an Office hearing representative remanded the case for an amended statement of accepted facts and a supplemental opinion from Dr. Gratzer. On July 16, 2007 Dr. Gratzer reviewed the updated statement of accepted facts and reported that it did not change his opinion. He noted that appellant worked long hours due to staff shortages prior to the development of her condition and that appellant indicated it was not a significant stressor affecting her presentation. Rather, Dr. Gratzer explained, the principal stressors appellant identified were not compensable factors of employment according to the updated statement of accepted facts.

On August 10, 2007 the Office issued a notice of proposed termination of compensation finding that Dr. Gratzer’s opinion represented the weight of the medical evidence. In a decision dated September 11, 2007, the Office terminated appellant’s compensation.

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.³ The coverage for basic life insurance is effective unless waived,⁴ and the

³ 5 U.S.C. § 8702(a).

⁴ *Id.* § 8702(b).

premiums for basic and optional life coverage are withheld from the employee's pay.⁵ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensation was an employee will be used to withhold premiums from his or her compensation payments.⁶ When an underwithholding of life insurance 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.⁷

ANALYSIS -- ISSUE 1

Payment records show that the Office deducted basic and optional life insurance premiums from appellant's compensation prior to July 8, 2006. As appellant brought this to the Office's attention on July 17, 2007, those deductions stopped. Payments records show that the Office resumed the deductions after July 7, 2007. So for that one-year period from July 8, 2006 through July 7, 2007, appellant received compensation without deductions for her life insurance coverage. The Office's underwithholding of the life insurance premiums created an overpayment of compensation. The Board will affirm the Office's September 13, 2007 decision on the issue of fact of overpayment.

At \$208.10 every 28 days, the Office should have deducted \$2,712.73 in premiums for the one year in question (365/28 x \$208.10). The record does not explain why the Office declared an overpayment of \$2,654.90, which is \$57.83 less. But to the extent that appellant received an overpayment of at least \$2,654.90, the Board will affirm the Office's September 13, 2007 decision on the issue of 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.⁸ 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

⁵ *Id.* § 8707.

⁶ *Id.* § 8706(b).

⁷ *Id.* § 8707(d); see *James Lloyd Otte*, 48 ECAB 334 (1997).

⁸ 20 C.F.R. § 10.433(a) (1999).

Employees' Compensation Act or (2) adjustment or recovery of the overpayment would be against equity and good conscience.⁹

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.¹⁰

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.¹¹

ANALYSIS -- ISSUE 2

Although appellant was without fault in the matter of the overpayment, she nonetheless bears responsibility for providing the financial information necessary to support any waiver of the overpayment. Because she did not complete and submit the overpayment recovery questionnaire that the Office provided her on August 3, 2007, the Office cannot determine whether or not recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience. In these circumstances, regulations require the Office to deny waiver, and no further request for waiver shall be considered until the requested information is furnished. The Board will affirm the Office's September 13, 2007 decision on the issue of waiver.

LEGAL PRECEDENT -- ISSUE 3

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹² "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.¹³

⁹ *Id.* § 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.* § 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.* § 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.* § 10.437(b).

¹⁰ *Id.* § 10.438(a).

¹¹ *Id.* § 10.438(b).

¹² 5 U.S.C. § 8102(a).

¹³ 20 C.F.R. § 10.5(f) (1999).

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹⁴ After it has determined that an employee has disability causally related to federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹⁵

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁶ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁷

ANALYSIS -- ISSUE 3

When a conflict arose between appellant's psychologist and an Office referral psychiatrist on whether appellant had any residual emotional condition causally related to the one compensable factor of employment, the Office properly referred appellant to Dr. Gratzer, a Board-certified psychiatrist, for an impartial medical evaluation. The Office provided Dr. Gratzer with appellant's entire record and an updated statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Gratzer examined appellant and explained that her psychiatric difficulties were not related to stresses associated with the identified compensable work factor, namely, working 10 to 12 hours a day and weekends due to understaffing and trying to meet the demands of her job. Rather, he stated, it was her account of harassment and persecution at the employing establishment, which the Office did not accept as factual and compensable, that were the principal stressors affecting her ongoing symptomatology.

The Board finds that Dr. Gratzer's opinion is well rationalized and carries special weight in resolving the conflict on whether appellant continues to suffer residuals of her accepted employment injury.¹⁸ Because his opinion represents the weight of the medical evidence, the Board finds that the Office met its burden of proof to terminate appellant's compensation. The Board will affirm the Office's September 11, 2007 decision.

¹⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

¹⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

¹⁶ 5 U.S.C. § 8123(a).

¹⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁸ Appellant's psychologist, who was on one side of the conflict that Dr. Gratzer resolved, submitted an April 17, 2006 report that reviewed Dr. Gratzer's opinion and expressed some disagreement and concern. But this alone does not create a conflict with Dr. Gratzer necessitating referral to a second impartial medical specialist. See *John D. Jackson*, 55 ECAB 465 (2004); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (such a report is generally insufficient to overcome the weight of the impartial medical specialist's opinion or to create new conflict).

CONCLUSION

The Board finds that appellant received a \$2,654.90 overpayment of compensation because the Office underwithheld premiums for basic and optional life insurance. The Board finds that the Office properly denied waiver of the overpayment. The Board further finds that the Office properly terminated appellant's compensation. The opinion of the impartial medical specialist establishes that her emotional condition is no longer related to the compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the September 13 and 11, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 10, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board