

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

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**C.B., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Richmond, VA, Employer**

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**Docket No. 12-87  
Issued: May 23, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 24, 2011 appellant filed a timely appeal from the April 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received a \$7,225.25 overpayment of compensation; and (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

OWCP accepted that on August 2, 1993 appellant, then a 48-year-old problem resolution officer, sustained a lumbar strain, chest wall contusion and bilateral knee contusions after a taxi began moving while she was exiting.<sup>2</sup> Appellant stopped work on August 19, 1993 and OWCP paid wage-loss compensation for total disability.

Appellant retired from the employing establishment in late 2004 and elected to continue to receive OWCP compensation benefits. A May 19, 2005 document from the Office of Personal Management (OPM) noted that appellant elected Postretirement Basic Life Insurance (PRBLI) effective January 9, 2005.<sup>3</sup>

On July 27, 2010 the Social Security Administration (SSA) advised OWCP that, effective June 1, 2010, appellant began receiving Federal Employment Retirement System (FERS) retirement benefits. The SSA reported the amount of appellant's benefits with and without FERS. OWCP was also advised by OPM that appellant elected to be converted to PRBLI, but that deductions for PRBLI premiums were not made from her compensation payments beginning January 9, 2005. Effective August 1, 2010, it adjusted appellant's wage-loss compensation based on the FERS offset received as part of her SSA retirement benefits and began to make deductions for PRBLI premiums.

In an August 10, 2010 letter, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$7,225.25 from January 9, 2005 to July 31, 2010 as deductions for PRBLI premiums were not made from her wage-loss benefits. It also made a preliminary determination that she was not at fault in the creation of the overpayment. OWCP advised appellant that she could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. It informed appellant that she could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that appellant complete and return an enclosed overpayment recovery questionnaire form within 30 days even if she was not requesting waiver of the overpayment.<sup>4</sup>

Appellant requested a prerecoupment hearing in connection with the \$7,225.25 overpayment. She submitted an overpayment recovery questionnaire form, completed on September 9, 2010, in which she disputed the amount but she did not provide any of the

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<sup>2</sup> OWCP later accepted that appellant sustained post-traumatic stress disorder and insomnia as a consequence of the August 2, 1993 accident.

<sup>3</sup> The document showed that no PRBLI premium deductions were made.

<sup>4</sup> On September 22, 2010 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$1,102.44 on the basis that her compensation benefits were not reduced by the applicable SSA/FERS offset for the period June 1 to August 28, 2010. It later finalized this preliminary determination and found that it was not subject to waiver. Appellant has not contested OWCP's findings with respect to the \$1,102.44 overpayment and the matter is not currently before the Board.

requested financial information. Appellant asserted that she did not elect PRBLI and claimed that she was never advised that she had to pay such premiums upon retirement.

In an October 5, 2010 letter, OWCP clarified how it computed the overpayment of compensation due to a lack of deductions for PRBLI premiums. It noted that the rate for PRBLI prior to appellant's 65<sup>th</sup> birthday was \$2.15 per month and after her 65<sup>th</sup> birthday it was \$1.83 a month. These monthly rates were for each \$1,000.00 of the basic insurance amount in effect at the time of appellant's retirement.<sup>5</sup> Based on the information provided by OPM regarding the insurance premium rates, it calculated the overpayment amount of \$7,225.25.

Appellant submitted another overpayment recovery questionnaire form, completed on October 22, 2010. She continued to dispute the \$7,225.25 overpayment without providing any of the requested financial information. Appellant stated that she had contacted the SSA and was told that there was no problem with her retirement arrangements.

On February 25, 2011 a prerecoupmment hearing was held by telephone with an OWCP hearing representative. Appellant contended that she did not owe any money for PRBLI premiums. She noted that, in a June 4, 1998 letter, OWCP advised her that she would be paid compensation under the conditions set forth in the letter, namely that, if she had basic life insurance, Federal Employees' Group Life Insurance Program (FEGLI) would continue at no cost to her.<sup>6</sup> Appellant asserted that she had never received any communication telling her anything different regarding her compensation payments. When she retired, the employing establishment asked if she wanted to continue her FEGLI and noted that she responded in the affirmative. Appellant assumed that her life insurance would continue to be paid and believed that OWCP would advise her if anything changed. She stated that when she retired OPM had her complete forms advising that she wanted to continue her life insurance. Appellant indicated that she did not have a normal retirement briefing where she sat down with someone, but rather discussed the matter over the telephone and had forms sent to her to complete. She stated that when she retired she could not recall requesting PRBLI. Appellant asserted that had she known the rate would be about \$90.00 a month she would not have requested the coverage.<sup>7</sup> She stated that OWCP initially advised her that the rate was \$2.15 and \$1.83 a month. When appellant pointed out that these rates, computed from 2005, would not total \$7,225.25, she was informed that the rates were for each \$1,000.00 of coverage. The hearing representative asked appellant about providing financial information as requested on the overpayment recovery questionnaire form. Appellant stated that she was financially able to repay the overpayment. When further advised that providing the financial information would be used to determine the method of recovery of the overpayment, appellant responded that she did not want to deal with the matter anymore.

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<sup>5</sup> The record contains computer records detailing how the calculations of the required PRBLI premiums were made.

<sup>6</sup> The record contains a June 4, 1998 letter to appellant in which OWCP stated, "If you have basic life insurance (FEGLI), coverage will continue at no cost to you."

<sup>7</sup> The Board notes that the monthly average for PRBLI premiums was actually greater than \$90.00.

In an April 28, 2011 decision, OWCP's hearing representative determined that appellant received a \$7,225.25 overpayment of compensation. He found that she was not at fault in the creation of the overpayment and that the overpayment was not subject to waiver. The hearing representative found that the overpayment occurred when required PRBLI premiums were not deducted from appellant's compensation between January 9, 2005 and July 31, 2010. Waiver of recovery of the overpayment was not warranted as appellant did not submit the requested financial information.<sup>8</sup>

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

Section 8102(a) of FECA 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 her duty.<sup>9</sup> Section 8129(a) of FECA provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”<sup>10</sup>

Section 8116(a) of FECA provides that while an employee is receiving compensation or if she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.<sup>11</sup>

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>12</sup> The coverage for basic life insurance is effective unless waived<sup>13</sup> and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.<sup>14</sup> While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee's compensation.<sup>15</sup> At separation from the employing establishment, FEGLI insurance will either

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<sup>8</sup> OWCP's hearing representative also finalized OWCP's preliminary determination that appellant received an overpayment of compensation in the amount of \$1,102.44 because her compensation benefits were not reduced by the applicable SSA/FERS offset for the period June 1 to August 28, 2010. As previously noted, this matter is not currently before the Board.

<sup>9</sup> 5 U.S.C. § 8102(a).

<sup>10</sup> *Id.* at § 8129(a).

<sup>11</sup> *Id.* at § 8116(a).

<sup>12</sup> *Id.* at § 8702(a).

<sup>13</sup> *Id.* at § 8702(b).

<sup>14</sup> *Id.* at § 8707.

<sup>15</sup> *Id.* at § 8707(b)(1).

terminate or be continued under “compensation” status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>16</sup> When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>17</sup>

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

The Board finds that appellant received a \$7,225.25 overpayment of compensation. Appellant received OWCP compensation for the period January 9, 2005 to July 31, 2010 but did not have \$7,225.25 in PRBLI premiums deducted for this period. OWCP was advised by OPM that appellant elected, effective January 9, 2005, to be converted to PRBLI. However, deductions for PRBLI premiums were not made from appellant’s wage-loss compensation payments until August 1, 2010. Before OWCP and on appeal to the Board, appellant stated that when she retired she did not recall requesting PRBLI coverage. She asserted that she just wanted her previous life insurance to continue as before and that no one advised her that there would be any change in her compensation benefits. The Board finds, however, that appellant has not provided any evidence to show that she declined PRBLI coverage. Appellant stated that OWCP failed to advise her of any change in her benefits after retirement and asserted that, had she known the cost of the PRBLI premiums, she would not have requested the coverage. Such circumstances would not have any bearing on whether appellant actually received an overpayment of compensation due to the failure to make deductions for PRBLI premiums.<sup>18</sup> OWCP explained how it computed the amount of the PRBLI premiums for the period January 9, 2005 to July 31, 2010 based on the information provided by OPM.

The record establishes that appellant received \$7,225.25 in compensation for the period January 9, 2005 to July 31, 2010 that she was not entitled to receive. Therefore, OWCP properly determined that appellant received a \$7,225.25 overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP’s discretion pursuant to statutory guidelines.<sup>19</sup> These statutory guidelines are found in section 8129(b) of FECA 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>20</sup> Since OWCP found

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<sup>16</sup> *Id.* at § 8706(b).

<sup>17</sup> 5 U.S.C. § 8707(d); *see Keith H. Mapes*, 56 ECAB 130 (2204); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>18</sup> Appellant submitted a June 4, 1998 letter addressed to her in which OWCP stated, “If you have basic life insurance (FEGLI), coverage will continue at no cost to you.” However, this letter does not relate to appellant’s circumstances after her retirement.

<sup>19</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>20</sup> 5 U.S.C. § 8129(b).

appellant to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

Section 10.438 of OWCP's regulations provide:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA 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.”<sup>21</sup>

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

OWCP properly determined that appellant did not establish entitlement to waiver of recovery of the \$7,225.25 overpayment under the above-described standards. Appellant did not provide financial information within the appropriate time to show that she was entitled to waiver of the overpayment. Despite being advised of the importance of providing financial information on an overpayment recovery questionnaire form, she failed to provide such information. For these reasons, OWCP properly determined that appellant did not show that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, OWCP properly denied waiver of recovery of the \$7,225.25 overpayment.<sup>22</sup>

### **CONCLUSION**

The Board finds that appellant received a \$7,225.25 overpayment of compensation. The Board further finds that OWCP did not abuse its discretion by refusing to waive recovery of the overpayment.

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<sup>21</sup> 20 C.F.R. § 10.438.

<sup>22</sup> On appeal, appellant asserted that OWCP told her that she did not have to complete an overpayment recovery questionnaire form, but there is no evidence in support of this assertion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board