

On appeal, appellant contends that his health insurance was not reinstated until January 2010 even though he had been approved for compensation in May 2009 and that he could not afford COBRA insurance. He contends that he should not have to repay the overpayment as he was not at fault and it caused a financial hardship.²

FACTUAL HISTORY

On May 18, 2004 appellant, then a 54-year-old materials handling inspector, filed a claim for a traumatic injury alleging that, on May 10, 2004, he was a passenger in a government van when it was in a motor vehicle accident. On June 24, 2004 OWCP accepted his claim for a contusions of the back, left scapular region, right elbow and forearm and multiple sites of the right upper limb and right knee. On November 5, 2004 it accepted appellant's claim for right knee medial meniscus tear. On November 9, 2004 appellant underwent a right knee arthroscopy with partial medial meniscectomy. He resumed regular work duties on November 22, 2004. On May 6, 2009 OWCP accepted appellant's claim for post-traumatic stress disorder and major depression (single episode). It paid wage-loss compensation and medical benefits.

On June 21, 2008 the employing establishment terminated appellant due to his inability to perform the duties of his position. It noted that he was entitled to severance pay for a 52-week period beginning June 22, 2008.

By letter dated October 1, 2009, OWCP informed appellant that he would be paid compensation at the augmented 75 percent rate of \$1,087.25 a week.³ Appellant's first payment for the period September 27 through October 24, 2009 would be in the amount of \$3,261.75 and that \$0.00 would be deducted for health benefits, basic life insurance and optional life insurance.

By letter dated January 15, 2010, OWCP asked the employer to provide information with regard to appellant's health and life insurance benefits and deductions made by the employing establishment. It also asked for his pay rate effective November 10, 2007. In a February 1, 2010 memorandum, Yolanda Cardenas of the employing establishment, noted that appellant had basic life insurance (code E1) plus optional life insurance (1X). Appellant's code for health insurance was 105 and his pay rate as of November 10, 2007 was \$27.09 an hour. In a leave and earnings statement for the pay date of July 11, 2008, the employer indicated that deductions were made for optional life insurance in the amount of \$13.05, life insurance (E1) for \$78.30 and for health insurance (code 105) of \$1,295.42.

In a form dated February 4, 2010, OWCP noted that deductions should have been taken from appellant's compensation for HBI code 105 from September 27, 2009 through January 16, 2010 in the amount of \$1,337.12. Deductions should also have been made for this period in the amount of \$70.80 for basic life insurance and that a deduction should have been made for \$11.60 for E1 optional life insurance. OWCP then determined that this resulted in a net difference of \$1,419.52 (\$1,337.12 plus \$70.80 plus \$11.60).

² Appellant submitted additional evidence after OWCP's April 2, 2010 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

³ A payment plate indicated that this amount reflected the date appellant's disability began.

On February 4, 2010 OWCP made a preliminary determination that appellant had been overpaid benefits in the amount of \$1,419.52 because it did not deduct health premiums and life insurance premiums for the period September 27, 2009 through January 16, 2010. It determined that deductions should have been made for health premium code 105, basic life insurance and optional life insurance premium Code E1. OWCP recommended that appellant be found without fault in the creation of the overpayment and sent him an overpayment recovery questionnaire.

On February 23, 2010 OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$486.75 because he was paid compensation at an incorrect rate from September 27, 2009 through February 13, 2010. It determined that he was paid \$16,308.75 for the period September 27, 2009 through February 13, 2010, whereas he should have been paid compensation in the amount of \$15,822.00, resulting in an overpayment of \$486.75. OWCP made a recommendation that appellant be found without fault in the creation of the overpayment and sent him an overpayment recovery questionnaire. In a manual adjustment form, it indicated that the pay rate should have been 75 percent of \$1,054.80 effective June 22, 2008, reflecting the date of recurrence of disability. Appellant was advised of his right to submit evidence related to the overpayment.

By decision dated March 17, 2010, OWCP finalized its February 4, 2010 preliminary determination that appellant received an overpayment of \$1,419.52. It further found that, although he was without fault in the creation of the overpayment, as he had not demonstrated that recovery would defeat the purpose of FECA or be against equity and good conscience, the entire overpayment would be collected by deducting \$277.37 from continuing compensation payments.

By decision dated April 2, 2010, OWCP finalized its February 23, 2010 preliminary overpayment determination that appellant received an overpayment in the amount of \$486.75 and found that the overpayment would be collected by deducting \$162.25 from future compensation payments as appellant had not demonstrated that recovery would either defeat the purpose of FECA or be against equity and good conscience.

LEGAL PRECEDENT -- ISSUE 1

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 duty.⁴ 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.⁵

Under the Federal Employees' Group Life Insurance Program (FEGLI), most civilian employees of the Federal Government are eligible to participate in basic life insurance and one

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

or more of the options.⁶ The coverage for basic life insurance is effective unless waived⁷ and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.⁸ While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee's compensation.⁹ At separation from the employing establishment, the FEGLI insurance will either terminate to be continued under compensation status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deduction made will be used to withhold premiums from his overcompensation payments.¹⁰ When an underwithholding 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.¹¹ Furthermore, the Board has also recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.¹²

Section 8101(4) of FECA defines monthly pay for compensation purposes as follows:

“‘[M]onthly pay’ means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than [six] months after the injured employee resumes full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period.”¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,419.52 for the period September 27, 2009 through January 16, 2010. The record reflects that he was enrolled in health insurance, code 105 and that deductions should have been taken from his compensation payments during this period in the amount of \$1,337.12. The record also shows that deductions should have been made for basic life insurance in the amount of \$70.80 and for optional life insurance in the amount of \$11.60. Therefore, an overpayment was created as OWCP did not deduct premiums for health and life insurance benefits that appellant had elected. The Board finds that appellant received a \$1,419.52 overpayment due to the failure to

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8707(b)(1).

¹⁰ *Id.* at § 8706(b).

¹¹ *Id.* at § 8707(d).

¹² *S.R.*, Docket No. 10-794 (issued December 15, 2010).

¹³ 5 U.S.C. § 8101(4).

deduct the proper life and health insurance premiums for the period September 27 through January 16, 2010.

The Board further finds that appellant received an overpayment in the amount of \$486.75, because he was paid an incorrect rate of compensation for the period September 27, 2009 through February 13, 2010. Appellant was paid compensation for this period of time based on 75 percent of a weekly rate of pay of \$1,087.25, based on payment of \$16,308.75. However, OWCP later determined that he should have been paid based on 75 percent of a weekly pay rate of \$1,054.80, based on payment of \$15,822.00. The amount of \$1,054.80 represented the date recurrence of disability began. Appellant returned to regular work following the May 10, 2004 employment injury and was terminated due to his inability to perform his duties effective June 21, 2008. His severance pay began June 22, 2008. The rate of pay effective June 22, 2008 was \$1,054.80, the date the recurrence began.¹⁴ This resulted in an overpayment of \$486.75 and OWCP properly determined in its April 2, 2010 decision that this resulted in an overpayment.

LEGAL PRECEDENT -- ISSUE 2

When an overpayment of compensation has been made because of an error of factor law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.¹⁵ OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating an overpayment.¹⁶

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 an overpayment should be waived. This information will also be used to determine the repayment schedule, if necessary. 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.¹⁷

ANALYSIS -- ISSUE 2

When OWCP issued its preliminary determinations with regard to overpayment on February 4 and 23, 2010, it asked appellant to complete an overpayment recovery questionnaire and attach supporting financial documentation. It explained the consequences of failing to do so. Because appellant failed to submit the requested information within 30 days, OWCP had no discretion in the matter; the law required a denial of waiver. The Board will therefore affirm the decisions on the issue of waiver.

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8129(a).

¹⁶ 20 C.F.R. § 10.433(a).

¹⁷ *Id.* at § 10.438.

Appellant argues that he was not at fault in the creation of the overpayment and he is correct. However, that does not mean he gets to keep money that does not belong to him.¹⁸ OWCP could waive the overpayment if appellant's financial circumstances qualify. It cannot make that determination without the information requested by the overpayment questionnaire.

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation having due regard to 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 resulting hardship upon such individual.¹⁹

ANALYSIS -- ISSUE 3

OWCP directed recovery of the overpayment of the \$1,419.52 overpayment by deducting \$277.37 from each of appellant's continuing compensation payments. It directed recovery of the overpayment of \$486.75 by collecting \$162.25 from future compensation payments.

The Board finds that OWCP properly directed recovery of the overpayment at this rate from appellant's continuing compensation. As noted, appellant failed to submit an overpayment recovery questionnaire or any other financial information that OWCP requested prior to the final overpayment decisions. The overpaid individual is responsible for providing information about income, expenses and assets as specified by OWCP.²⁰ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²¹ Because appellant did not submit the requested financial information there is no evidence of record to establish that OWCP erred by directing recovery of \$277.37 plus \$162.25 from future compensation payments until the overpayment was repaid.

CONCLUSION

The Board finds that OWCP properly found that appellant received overpayments in the amount of \$1,419.52 and \$486.75. The Board further finds that OWCP properly denied waiver of recovery of the overpayments and properly set forth the terms for collecting these overpayments from his continuing compensation payments.

¹⁸ *P.R.*, Docket No. 10-1244 (issued January 4, 2011).

¹⁹ 20 C.F.R. § 10.441(a); see *Steven R. Cofrancesco*, 57 ECAB 62 (2006).

²⁰ *Id.*

²¹ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 1994).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 2 and March 17, 2010 are affirmed.

Issued: August 11, 2011
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