

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

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| J.L., Appellant |) | |
| |) | |
| and |) | Docket No. 12-924 |
| |) | Issued: November 6, 2012 |
| U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer |) | |
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 19, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) overpayment decision dated September 23, 2011. Pursuant to the Federal Employees' Compensation Act¹ (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 \$2,353.70 overpayment of compensation; and (2) whether OWCP abused its discretion in denying waiver of the overpayment.

FACTUAL HISTORY

OWCP accepted that on June 30, 1997 appellant, then a 46-year-old mail carrier, sustained a bilateral lateral epicondylitis, myalgia and myositis in the performance of duty. She

¹ 5 U.S.C. § 8101 *et seq.*

stopped work in 1999. Appellant received wage-loss compensation for total disability effective August 14, 1999, for which she was placed on the periodic rolls.

On December 3, 2010 appellant notified OWCP that she was adding her husband to her health plan. She provided a Health Benefits Election Form (Form 2809), which noted that her new enrollment code was 112 as of November 4, 2010.

In a January 13, 2011 memorandum, OWCP found that an overpayment had occurred in the amount of \$2,353.70 for the period August 14, 1999 to December 18, 2010 because appellant's health benefit was changed effective November 4, 2010 and because she had never paid basic life insurance (BLI). The overpayment was calculated comparing the difference between the health premiums deducted under code 111 and the health premiums she should have had deducted under code 112 for the period November 4 through December 18, 2010. OWCP noted that appellant paid \$186.00 in premiums for the period October 24 through December 18, 2010 under code 111. The actual health benefit due from October 24 to November 3, 2010 under code 111 was \$36.54. For the period November 4 through December 18, 2010, \$350.07 was due under code 112. OWCP added \$36.54 to \$350.07, totaling \$386.61 to reflect the total amount of total health benefits due for the period October 24 through December 18, 2010. It then subtracted the \$386.61 due from the \$186.00 paid by appellant during this time period, resulting in a \$200.61 overpayment. OWCP also found that BLI was never collected from the time she was placed on periodic rolls on August 14, 1999 to December 18, 2010, resulting in an overpayment of \$2,153.09. Thus, appellant's total overpayment was \$200.61 for health benefits insurance plus \$2,153.09 for BLI, totaling \$2,353.70.

On January 13, 2011 OWCP notified appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$2,353.70 for the period August 14, 1999 to December 18, 2010. Appellant had changed her health plan effective November 4, 2010, but the form was not processed until December 2010, resulting in incorrect withholdings for her health premiums from December 4 to 18, 2010. OWCP further noted that she had not paid any premiums for BLI commencing August 14, 1999. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that she submit financial information pursuant to an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days if she sought waiver of the overpayment. It noted that waiver would be denied if appellant failed to furnish the information requested on the enclosed OWCP-20 form with supporting documentation within 30 days. OWCP further informed her that she could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. The Board notes that no OWCP-20 form appears enclosed with the January 13, 2011 preliminary determination of record.

By decision dated June 13, 2011, OWCP finalized the preliminary determination finding that appellant was overpaid in the amount of \$377.84 for changing her health insurance benefits retroactively and was also undersubscribed to the BLI policy since the inception of her periodic rolls. It noted that no evidence or argument had been submitted.

By decision dated September 23, 2011, OWCP amended the June 13, 2011 decision, which found that appellant received an overpayment of \$377.84, noting that an incorrect amount was determined. It found that she was actually overpaid in the amount of \$2,353.70 for the

period August 14, 1999 to December 18, 2010, which was correctly noted in the January 13, 2011 preliminary determination. OWCP further found that appellant was without fault in the overpayment but denied waiver of recovery of the overpayment. It noted that no additional evidence or arguments were submitted in response to the preliminary overpayment decision dated January 13, 2011.

LEGAL PRECEDENT -- ISSUE 1

The regulations of the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs indebtedness due to the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.”²

In addition, 5 C.F.R. § 890.502(c) provides:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected contributions and applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees’ Health Benefits Fund.”³

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.⁴ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.⁵ The Board has 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.⁶

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the

² 5 C.F.R. § 890.502(a)(1).

³ *Id.* at § 890.502(c).

⁴ *Supra* note 2.

⁵ *Supra* note 3.

⁶ See *James Lloyd Otte*, 48 ECAB 334 (1997); *Marie D. Sinnett*, 40 ECAB 1009 (1989); *John E. Rowland*, 39 ECAB 1377 (1988); 5 C.F.R. § 890.502.

options.⁷ The coverage for basic life is effective unless waived⁸ and premiums for basic and optional life coverage's are withheld from the employee's pay.⁹

FECA and its implementing regulations provide that an employee entitled to disability compensation benefits may continue BLI coverage without cost under certain circumstances¹⁰ and may also retain the optional life insurance (OLI).¹¹ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.¹² If the compensation chooses to continue BLI and OLI 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.¹³ Thus while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,353.70 for the period August 14, 1999 to December 18, 2010.

The record shows that an overpayment occurred because deductions of health benefit premiums from appellant's compensation were made pursuant to the wrong code from November 4 to December 18, 2010. On December 3, 2010 appellant provided OWCP with an OPM Notice of Change in Health Benefits Enrollment form showing a change of health plans effective November 4, 2010. She added her husband to her health benefits plan. Because the form was not processed until December 2010, incorrect withholdings for health premiums occurred. In its January 13, 2011 memorandum, OWCP calculated the amount of overpayment by taking the health premiums appellant had deducted from her compensation from October 24 to December 18, 2010 under code 111 and subtracting the amount of health premiums appellant should have had deducted from her compensations under code 112 to arrive at an overpayment of \$200.61.¹⁵ Based on this determination, it properly found that she received an overpayment of compensation of health insurance benefits in the amount of \$200.61.¹⁶

⁷ 5 C.F.R. § 870.201.

⁸ *Id.* at § 870.204(a).

⁹ *Id.* at § 870.401(a).

¹⁰ *Id.* at § 870.701, subpart G.

¹¹ *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

¹² *Id.* at § 870.501.

¹³ *Id.* at § 872.410, subpart D.

¹⁴ *Scherri L. Stanley*, 53 ECAB 433 (2002).

¹⁵ *T.S.*, Docket No. 12-624 (issued August 1, 2012).

¹⁶ *J.B.*, Docket No. 11-2005 (issued July 23, 2012).

With respect to the overpayment of BLI, the record does not establish that appellant waived coverage of her premiums. On appeal, appellant contends that she did not know that she was enrolled for life insurance coverage. As noted, coverage for basic life is effective unless waived¹⁷ and premiums for basic and optional life coverages are withheld from the employee's pay.¹⁸ Appellant is responsible for payment of the premiums and the premiums must be deducted from her compensation payments.¹⁹ The compensation payments from August 14, 1999 through December 18, 2010 did not include any deductions for BLI premiums. Therefore, the fact of overpayment has been established.²⁰

As to the amount, OWCP determined that, the period August 14, 1999 through December 18, 2010, appellant owed \$2,153.09 in BLI premiums. Since no deductions were made for BLI premiums during this period, this entire amount is an overpayment of compensation. With regard to health benefit insurance, appellant owed \$200.61 for the period November 4 to December 18, 2010. When added to the \$2,153.09 owed for BLI, the Board finds a total overpayment of \$2,353.70.

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.²¹ An individual should always be found without fault where the overpayment resulted from OWCP error in the underdeduction of health benefits or life insurance premiums.²²

If OWCP 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 FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.²³

Section 10.431 of the implementing regulations provide that, before seeking to recover an overpayment or adjust benefits, OWCP will advise the individual in writing that the overpayment exists and the amount of the overpayment.²⁴ The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.²⁵ Additionally, OWCP is obliged to advise the individual of his or her right to

¹⁷ *Supra* note 8.

¹⁸ *Supra* note 9.

¹⁹ *W.J.*, Docket No. 12-672 (issued August 24, 2012).

²⁰ *S.W.*, Docket No. 11-895 (issued December 5, 2011).

²¹ 20 C.F.R. § 10.433(a).

²² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b) (June 2009).

²³ 20 C.F.R. § 10.434. *See* 5 U.S.C. § 8129(b).

²⁴ *Id.* at § 10.431(a).

²⁵ *Id.* at § 10.431(b).

inspect and copy the government records relating to the overpayment.²⁶ Lastly, the preliminary notice must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable and the right to request a waiver of recovery of the overpayment.²⁷ The recipient of the alleged overpayment may present evidence in response to OWCP's preliminary notice either in writing or at a precoupment hearing.²⁸ The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment.²⁹ Failure to request the hearing within this 30-day time period shall constitute waiver of that right.³⁰

OWCP's procedure manual provides as follows:

If a claimant is determined to be without fault, Form CA-2202 [preliminary finding notice] must be released (along with an OWCP-20) within 30 days of the date the overpayment is identified. This letter advises the claimant of the fact and amount of the overpayment and of the preliminary finding that the claimant is without fault in the creation of the overpayment. The reason that the overpayment occurred must be clearly stated in the preliminary decision and the OE [Office Examiner] should provide a clearly written explanation indicating how the overpayment was calculated.³¹

ANALYSIS -- ISSUE 2

The Board finds this case is not in posture for decision regarding whether OWCP properly denied waiver of the overpayment.

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that she is without fault in creating the overpayment does not preclude OWCP from collecting the overpayment. Appellant is still required to repay the debt unless: (1) recovery of the overpayment would defeat the purpose of FECA; or (2) recovery of the overpayment would be against equity and good conscience as set forth in 20 C.F.R. §§ 10.434 and 10.437. In its September 23, 2011 decision, OWCP denied waiver of recovery of the overpayment, noting that no OWCP-20 form or supporting documents were received from appellant.

The Board finds that OWCP failed to follow its procedures in issuing the January 13, 2011 preliminary determination. OWCP regulations provide that, before seeking to recover an overpayment or adjust benefits, it will advise the individual in writing that the overpayment

²⁶ *Id.* at § 10.431(c).

²⁷ *Id.* at § 10.431(d).

²⁸ *Id.* at § 10.432.

²⁹ *Id.*

³⁰ *Id.*

³¹ Federal (FECA) Procedure Manual, *supra* note 22, Chapter 6.200.4(a)(2) (May 2004).

exists and the amount of the overpayment.³² The written notification must also include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.³³ OWCP must inform the individual of his or her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable and the right to request a waiver of recovery of the overpayment.³⁴ Its procedure manual further provides that a preliminary finding of overpayment must be provided within 30 days, along with the OWCP-20 form overpayment recovery questionnaire and must clearly identify the reason that the overpayment occurred and the basis for any fault finding.³⁵

OWCP did not provide appellant with a Form OWCP-20 overpayment recovery questionnaire with its January 13, 2011 preliminary determination. Appellant was not afforded an opportunity to provide her financial information or supporting documentation through the overpayment recovery questionnaire. This did not conform to OWCP's implementing regulations or its procedure manual.³⁶ Although OWCP stated that it was enclosing an OWCP-20 form, no such form appears as an enclosure to the preliminary overpayment notification. Thus, it should not have issued a final determination on whether recovery of the overpayment should have been waived prior to.³⁷

As OWCP failed to provide appellant with a Form OWCP-20 overpayment recovery questionnaire, the Board concludes that the September 23, 2011 decision regarding waiver of overpayment was not properly issued. Consequently, the case will be remanded to OWCP to provide her with the proper forms and an opportunity to respond to the overpayment recovery questionnaire with supporting financial documentation. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on whether overpayment should be waived.³⁸

CONCLUSION

The Board finds that OWCP properly determined that appellant received a \$2,353.70 overpayment of compensation for the period August 14, 1999 through December 18, 2010. The Board further finds that OWCP did not properly notify her of her right to submit financial

³² 20 C.F.R. § 10.431(a).

³³ *Id.* at § 10.431(b).

³⁴ *Id.* at § 10.431(d).

³⁵ Federal (FECA) Procedure Manual, *supra* note 31.

³⁶ *Id.*

³⁷ *K.G.*, Docket No. 08-2135 (issued April 16, 2009).

³⁸ *J.B.*, Docket No. 11-2005 (issued July 23, 2012).

information on an OWCP-20 case will be remanded to OWCP to consider waiver of the overpayment.³⁹

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed in part, with regard to the fact and amount of overpayment. The decision is set aside with regard to waiver of recovery. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 6, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

³⁹ In view of the Board's finding that the case must be remanded for OWCP to consider waiver of the overpayment, it is premature to address recovery of the overpayment.