

FACTUAL HISTORY

On January 28, 2002 OWCP accepted that appellant, then a 52-year-old accounting technician, sustained a major depressive disorder, single episode, due to exposure to stress at work. She stopped work on December 2, 2001 and later retired from the employing establishment. Appellant received wage-loss compensation for total disability.

In an April 8, 2002 letter, OWCP advised appellant of her weekly compensation beginning August 29, 2001. The letter listed various forms of life insurance and health benefits and indicated whether deductions were being made. OWCP advised appellant that, if she had basic or optional life insurance and/or health benefits, but no reduction was listed, that she needed to contact OWCP immediately. It informed her that she would be responsible for the premiums. The letter noted that no deductions were being made for Post-Retirement Basic Life Insurance. In a September 19, 2002 letter to OWCP, an official from the Office of Personnel Management advised that appellant had elected Post-Retirement Basic Life Insurance and that July 19, 2002 was the commencing date for making deductions for this insurance.

In a February 17, 2012 letter, OWCP advised appellant of its preliminary determination that she received a \$9,340.05 overpayment of compensation because deductions for Post-Retirement Basic Life Insurance were not made from July 19, 2002 to January 14, 2012.² While the overpayment occurred because of an OWCP error, she did not notify OWCP that deductions were not made, a requirement of which she was aware. OWCP advised appellant of its preliminary determination that she was at fault in the creation of the overpayment, noting that she was advised in an April 8, 2002 letter of her responsibility to report to OWCP any failure to deduct premiums for Post-Retirement Basic Life Insurance. Therefore, appellant failed to provide information which she knew or should have known to be material and she accepted payments that she knew or should have known to be incorrect. OWCP requested that she complete and submit an enclosed financial questionnaire (Form OWCP-20) within 30 days of the letter.³

In a March 19, 2012 decision, OWCP determined that appellant received a \$9,340.05 overpayment of compensation because deductions for Post-Retirement Basic Life Insurance were not made for the period July 19, 2002 to January 14, 2012. It also found that she was at fault in creating the overpayment of compensation, thereby precluding waiver of recovery of the overpayment. Noting appellant's failure to submit financial information within the allotted time, OWCP properly required repayment of the overpayment by deducting \$374.17 from her compensation payments every 28 days.

² OWCP began to make the proper deductions on January 15, 2012. The record contains a January 23, 2012 letter advising appellant that this deduction was being made starting January 15, 2012.

³ The record contains documents showing that, if deductions had been made for Post-Retirement Basic Life Insurance during the period July 19, 2002 to January 14, 2012, the deductions would amount to \$9,340.05.

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.⁴ The coverage for basic life is effective unless waived⁵ and premiums for basic and optional life coverage are withheld from the employee's pay.⁶

FECA and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances⁷ and may also retain the optional life insurance.⁸ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.⁹ If the compensationner chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationner was an employee will be used to withhold premiums from his or her compensation payments.¹⁰ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$9,340.05 overpayment of compensation. Appellant elected to receive Post-Retirement Basic Life Insurance effective July 19, 2002. While in compensationner status, she remained responsible for all insurance benefits, including the premiums for Post-Retirement Basic Life Insurance.¹² The record establishes that the deductions for Post-Retirement Basic Life Insurance during the period July 19, 2002 to January 14, 2012 amounted to \$9,340.05. The Board finds that appellant received a \$9,340.05 overpayment of compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment shall be made by decreasing later

⁴ 5 C.F.R. § 870.201.

⁵ *Id.* at § 870.204(a).

⁶ *Id.* at § 870.401(a).

⁷ *Id.* at § 870.701, subpart G.

⁸ *Id.* at § 871.201, subpart B.

⁹ *Id.* at § 870.501.

¹⁰ *Id.* at § 872.410, subpart D.

¹¹ *Scherri L. Stanley*, 53 ECAB 433 (2002).

¹² *See supra* notes 9 through 11.

payments to which an individual is entitled.¹³ The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery 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.”¹⁴ No waiver of payment is possible if the claimant is not “without fault” in helping to create the overpayment.¹⁵

In determining whether an individual is not “without fault” or alternatively, “with fault,” section 10.433(a) of Title 20 of the Code of Federal Regulations provide in relevant part:

“An individual is with fault in the creation of an overpayment who--

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect....”¹⁶

Section 10.433(c) of OWCP’s regulations provide:

“Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.”¹⁷

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the \$9,340.05 overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

In an April 8, 2002 letter, OWCP listed various forms of life insurance and health benefits and listed whether deductions were being made. It advised appellant that, if she had basic or optional life insurance and/or health benefits, but no reduction for it was listed, she needed to contact OWCP immediately. OWCP informed her that she remained responsible for the premiums.

¹³ 5 U.S.C. § 8129(a).

¹⁴ *Id.* at § 8129(b).

¹⁵ *Robert W. O’Brien*, 36 ECAB 541, 547 (1985).

¹⁶ 20 C.F.R. § 10.433(a).

¹⁷ *Id.* at § 10.433(c).

Appellant was properly notified by OWCP that she would be responsible for the premiums for her Post-Retirement Basic Life Insurance. The deductions were not made for the period July 19, 2002 to January 14, 2012. Appellant knew or should have known that she received incorrect payments when she accepted compensation payments that did not include deductions for Post-Retirement Basic Life Insurance. She was at fault in the creation of the overpayment as she also failed to provide information which she knew or should have known to be material. Appellant was advised of the need to report to OWCP if deductions were not made for Post-Retirement Basic Life Insurance, but she failed to advise OWCP that such deductions were not being made.

OWCP properly found that appellant was at fault in creating the \$9,340.05 overpayment of compensation and that, therefore, the overpayment was not subject to waiver.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provide that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, “taking into account 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 hardship.”¹⁸ When an individual fails to provide request information on income, expenses and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹⁹

ANALYSIS -- ISSUE 3

The record supports that, in requiring repayment of the overpayment by deducting \$374.17 from appellant’s compensation payments every 28 days. OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. The Board notes that she failed to provide information on income, expenses and assets and OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly.²⁰ OWCP properly required

¹⁸ *Id.* at § 10.441.

¹⁹ *Gail M. Roe*, 47 ECAB 268 (1995).

²⁰ Appellant did not submit the financial questionnaire form within the time allotted by OWCP. On appeal, she alleged that she did not receive communications from OWCP regarding the overpayment and, therefore, she did not submit evidence in connection with the overpayment. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991). The Board notes, however, that the February 17, 2012 preliminary determination and the March 19, 2012 decision were sent to appellant’s address of record and were duly mailed and she has not submitted evidence rebutting the presumption that she received these documents.

repayment of the overpayment by deducting \$374.17 from appellant's compensation payments every 28 days.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant received a \$9,340.05 overpayment of compensation. The Board finds that OWCP properly determined that she was at fault in creating the overpayment of compensation and that, therefore, the overpayment was not subject to waiver. The Board further finds that OWCP properly required repayment of the overpayment by deducting \$374.17 from appellant's compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2013
Washington, DC

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

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

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

²¹ On appeal, appellant requested that her monthly payments towards the overpayment be reduced. The Board has determined that the amount of the payment was proper, given the circumstances at the time OWCP issued its March 19, 2012 decision.