

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

N.J., Appellant

and

**U.S. POSTAL SERVICE, JACKSON STREET
POST OFFICE, Monroe, LA, Employer**

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**Docket No. 13-2164
Issued: April 18, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 23, 2013 appellant filed a timely appeal from the August 28, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which found that she received a \$1,905.37 overpayment of compensation.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant does not appeal OWCP's September 5, 2013 decision denying her recurrence claim. *See* 20 C.F.R. § 501.3. She confines her disagreement to OWCP's August 28, 2013 overpayment decision. Specifically, appellant does not agree with the amount owed and she explains the basis of that disagreement.

² 5 U.S.C. § 8101 *et seq.*

³ Appellant submitted to the Board some financial documentation, ostensibly for the purpose of reviewing in connection with the issue of waiver. The Board's review of a case, however, is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant received a \$1,905.37 overpayment of compensation from December 17, 2011 to June 1, 2013.

FACTUAL HISTORY

On November 8, 2010 appellant, then a 44-year-old rural carrier, filed an occupational disease claim alleging that her carpal tunnel syndrome, tendinitis and lipoma were a result of repetitive work activities. OWCP accepted her claim for right carpal tunnel syndrome, calcifying tendinitis of the right shoulder and other affections of the right shoulder. It expanded its acceptance to include neck sprain and displacement of cervical intervertebral disc without myelopathy.

Appellant received compensation for temporary total disability on the periodic rolls beginning May 8, 2011. She received a schedule award for an eight percent impairment of her right upper extremity, an award that ran from March 11 to September 1, 2012. Because appellant returned to work during the period of her schedule award, compensation for wage loss did not automatically resume upon expiration of the award.

OWCP authorized neck surgery, which appellant underwent on December 17, 2012. Appellant again received compensation for temporary total disability effective that date and was placed on the periodic rolls. Postretirement insurance premiums were not deducted from those compensation payments.

On March 26, 2013 OWCP indicated that appellant's "transfer in" date for life insurance enrollment was December 17, 2012.

On April 26, 2013 the Office of Personnel Management (OPM), Retirement Operations Center, informed OWCP that as a compensation, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI). The final base salary on which FEGLI was based was \$45,182.00. The postretirement election was no reduction and the commencement date for postretirement deductions was "December 17, 2011." OWCP began making the deduction on June 2, 2013.

OWCP made a preliminary determination that appellant received a \$1,905.37 overpayment of compensation because postretirement insurance deductions were not made on her compensation payments from December 17, 2011 to June 1, 2013. It found that she was without fault in the matter. OWCP calculated the overpayment by taking appellant's base salary, \$48,000.00 and multiplying it by the monthly premium rate of 2.155 percent, for a monthly premium of \$103.44. It then converted the monthly premium into a 28-day premium by multiplying by 12 and dividing by 13. This gave a 28-day premium of \$95.48. Dividing that premium by 28 gave a daily premium of \$3.41.

For December 17, 2011, therefore, OWCP determined that appellant owed \$3.41 for post retirement insurance. For the 28-day period from December 18, 2011 to January 14, 2012, appellant owed \$95.48.

The monthly premium rate rose slightly thereafter to 2.265 percent. Following the same procedure and using the same base salary, OWCP determined that appellant owed \$1,806.48 for the eighteen 28-day periods from January 15, 2012 to June 1, 2013.

In a decision dated August 28, 2013, OWCP finalized its preliminary determination and found that appellant received a \$1,905.37 overpayment. It denied waiver of recovery of the overpayment because she had submitted no financial documentation with her overpayment recovery questionnaire. OWCP requested payment of the full amount within 30 days.⁴

On appeal, appellant does not agree with the amount owed because she went back to work from February to November 1, 2012, “which leaves eight months that wasn’t paid, not a year and seven months.” She indicates that her salary was \$47,637.00, and she notes that she was receiving a schedule award.

LEGAL PRECEDENT

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life coverage are withheld from the employee’s pay.⁷ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under “compensation” status. 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.⁸ 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.⁹

ANALYSIS

OWCP found that appellant received a \$1,905.37 overpayment of compensation because postretirement insurance deductions were not made on her compensation payments from December 17, 2011 to June 1, 2013. The question on appeal is whether the evidence establishes a \$1,905.37 overpayment as a matter of fact.

The OPM Retirement Operations Center informed OWCP that the commencement date for appellant’s postretirement deductions was December 17, 2011. Just one month earlier, OWCP indicated that appellant’s “transfer in” date for life insurance enrollment was

⁴ Appellant was no longer receiving compensation from which OWCP could collect the debt.

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706(b).

⁹ *Id.* at § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

December 17, 2012, coinciding with her neck surgery and resumption of compensation for temporary total disability. This raises a question of whether the overpayment began on December 17, 2011 or December 17, 2012.

Further, OPM advised that the final base salary on which FEGLI was based was \$45,182.00. In its overpayment calculations, OWCP used a base salary of \$48,000.00. It did not explain its use of that figure or the source of the monthly premium rates.¹⁰

As the period of the overpayment and the overpayment's calculation are not clearly established, the Board will set aside OWCP's August 28, 2013 overpayment decision and remand the case for further development.

CONCLUSION

The Board finds that this case is not in posture for determination. Further development of the evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: April 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.0200.4.a(2) (June 2009) (OWCP should provide a clearly written explanation indicating how the overpayment was calculated).