

at fault; (2) whether the overpayment is subject to waiver of recovery; and (3) whether OWCP properly withheld \$200.00 from appellant's continuing compensation payments beginning July 28, 2013.

FACTUAL HISTORY

On January 13, 2005 appellant, then a 43-year-old clerk, injured his back when he fell in the performance of duty. On March 3, 2005 OWCP accepted his claim for lumbar sprain/strain. On June 20, 2005 it accepted that appellant sustained a recurrence of disability on April 13, 2005.

In a letter dated March 8, 2013, the Office of Personnel Management (OPM) stated that as a compensation appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) beginning April 29, 2006.

OWCP informed appellant in a letter dated April 18, 2013 that he had received an overpayment of compensation in the amount of \$10,286.39 because basic life insurance, optional life insurance and postretirement basic life insurance were not deducted from his compensation payments. It found that he was not at fault in the creation of the overpayment and requested that he provide financial information. OWCP noted that a deduction was made for basic life insurance on an incorrect salary of \$45,061.00 rather than \$47,148.00 resulting in an overpayment of compensation in the amount of \$53.79. It deducted \$355.84 from optional life insurance rather than the proper amount of \$1,516.94 resulting in an overpayment of \$1,161.10. Finally, OWCP failed to make any deduction for postretirement benefit life insurance when deductions totaling \$9,071.50 should have been made from April 29, 2006 through April 6, 2013. The total amount of the overpayment was \$10,286.39.

Appellant requested that OWCP make a decision based on the written evidence. He completed an overpayment recovery questionnaire on May 1, 2013 indicating monthly income of \$2,545.20 and his total monthly expenses of \$2,242.00. Appellant listed other funds totaling, \$973.25. He requested waiver of recovery of the overpayment.

OWCP conducted a telephone conference with appellant to discuss his monthly expenses. Appellant stated that his income was \$2,545.20 per month. His monthly expenses included rent of \$500.00, an electric bill of \$45.00 to 50.00, water of \$56.00, gas of \$62.00 to \$100.00, cable of \$93.00, cell phone of \$51.00, credit card debts of \$331.00, car insurance of \$65.00, food of \$250.00, toiletries of \$100.00, entertainment of \$100.00, prescriptions of \$45.00 and clothing of up to \$100.00. Appellant also had a car loan of \$245.79 per month, a personal loan of \$62.03 per month and medical expenses of \$50.00 per month. His total monthly expenses ranged from \$2,056.00 to \$2,199.00.

By decision dated July 17, 2013, OWCP determined that appellant had received an overpayment of compensation in the amount of \$10,286.39 for the period April 29, 2006 through April 6, 2013 as basic life insurance, optional life insurance and postretirement basic life insurance were not deducted from his compensation payments. It found that he was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver as appellant's income exceeded his expenses by more than \$50.00. OWCP determined that

appellant's income exceeded his expenses by \$346.17 per month and deduct \$200.00 every 28 days from his continuing compensation benefits.

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 his or her duty.³ 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.⁴

Under FEGLI, 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 When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.⁸

ANALYSIS -- ISSUE 1

The record reflects that OPM notified OWCP of an underwithholding of three FEGLI options for the period April 29, 2006 through April 6, 2013. OWCP calculated the amount of the under withholding and resulting overpayment to be \$10,286.39. It further found that appellant was not at fault in the creation of the resulting overpayment. The Board finds that OWCP properly determined the fact and the amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that when an overpayment of compensation occurs "because of an error of fact or law," adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.⁹ The only exception to this requirement that an overpayment must be recovered is set forth 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁹ *Id.* at § 8129(a).

adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would “defeat the purpose of FECA or would be against equity and good conscience,” pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations¹⁰ provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed the resource base of \$4,800.00 for an individual.¹¹ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00).¹²

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹³ Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss.¹⁴

ANALYSIS -- ISSUE 2

Appellant was found to be without fault in the creation of the overpayment. He completed an overpayment recovery questionnaire and a conference call with OWCP and provide his monthly income as \$2,545.20 per month and his monthly expenses as \$2,199.00. Appellant’s monthly income exceeds his expenses by more than \$50.00 per month. Therefore, recovery of the overpayment would not defeat the purpose of FECA. Recovery would not be against equity and good conscience as appellant did not change his position for the worse as a result of the overpaid funds. Appellant did not provide any information suggesting that he gave up a valuable right or changed his position for the worse in reliance on the payments. He has not established that recovery of the overpayment would be against equity and good conscience.

¹⁰ 20 C.F.R. § 10.436.

¹¹ *Id.* at § 10.436; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (October 2004).

¹² *Id.*

¹³ 20 C.F.R. § 10.437(b).

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.b(3) (October 2004).

Appellant has failed to establish that OWCP abused its discretion by refusing to waive recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of the regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [OWCP] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [OWCP] shall decrease later 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.”¹⁵

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation benefits by \$200.00 per month taking into account the amount of the compensation and the financial circumstances of appellant to minimize hardship, as well as the factors set forth in section 10.441. It found that this method of recovery would minimize any resulting hardship on him. Therefore, it properly required repayment of the overpayment by deducting \$200.00 from appellant's compensation payments every four weeks.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$10,286.39 for the period April 29, 2006 through April 6, 2013 for which he was not at fault, that he was not entitled to waiver of recovery of the overpayment and that the overpayment should be recovered by withholding \$200.00 per month from his continuing compensation benefits.

¹⁵ 20 C.F.R. § 10.441.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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