

FACTUAL HISTORY

On June 16, 2006 appellant, then a 56-year-old automation clerk, filed a traumatic injury claim (Form CA-1) alleging that she developed lower back pain while lifting a letter tray in the performance of duty. OWCP accepted her claim for sprain of the lumbar back on April 3, 2007. It accepted the additional conditions of displacement of lumbar disc at L3-4 and L4-5 on October 4, 2010. On December 14, 2010 OWCP entered appellant on the periodic rolls beginning December 6, 2010. It determined that she was covered by basic life insurance at the rate of \$16.80 per pay period beginning December 19, 2010. Appellant completed a Federal Employee Health Benefits (FEHB) Program election form on November 23, 1999 with enrollment code number 105. The employing establishment noted that her FEHB enrollment transferred to OWCP effective July 30, 2010.

Appellant underwent an L3-4, L4-5, and L5-S1 microdiscectomy and fusion on August 22, 2011. She submitted a series of EN1032 forms on February 9, 2012 and February 5, 2013 reflecting that she had not worked for the previous 15 months and had not received retirement benefits.

On March 20, 2013 OWCP accepted the additional conditions of postoperative infection, acquired deformities of the right ankle and foot, and fracture of the right metatarsal bones.

On November 19, 2013 OWCP received a letter from the Office of Personnel Management (OPM) informing that as a compensation appellant was eligible to continue Federal Employee's Group Life Insurance (FEGLI) coverage based on a salary of \$53,102.00 and that the deduction code was C0, Basic. OPM stated that the election of the postretirement benefits was for no reduction, and that the commencing date for postretirement deductions was July 30, 2011.

OWCP noted that basic postretirement life insurance premiums had not been deducted from appellant's compensation benefits effective July 30, 2011 through November 16, 2013. It stated that the amount of the overpayment was \$3,483.77 based on basic life insurance premiums of \$16.80 per pay period from July 30, 2011 through November 16, 2013.

On December 30, 2013 OWCP issued a preliminary determination of overpayment in the amount of \$3,483.77. It explained that it had failed to deduct basic postretirement life insurance premiums at the no reduction option in the amount of \$615.23 for the period July 30 through December 31, 2011 and in the amount of \$2,828.54 for the period January 1, 2012 through November 16, 2013 for a total overpayment of \$3,483.77. OWCP instructed appellant to complete an overpayment recovery questionnaire and to request a precoupment hearing if she disagreed with the findings of overpayment within 30 days. Appellant was found without fault in the creation of the overpayment.

On January 6, 2014 appellant requested a precoupment hearing and requested waiver of recovery of the overpayment as she was not at fault and that it would be a hardship for her to repay the overpayment. She submitted an overpayment recovery questionnaire and listed her monthly income as \$4,400.00 per month. Appellant listed her spouse as a dependent. She provided a list of expenses including mortgage \$500.00 per month; food \$300.00 per month; clothing \$50.00 per month; utilities 90.00 per month; and other expenses of \$500.00 per month. Appellant indicated that she had additional debt in the amount of \$13,000.00 on which she made

a monthly payment of \$320.00 for total monthly expenses of \$2,570.00. She stated that she owned property other than her home, family automobile, and household furnishing valued at approximately \$15,000.00 and that she had \$200.00 in cash and \$400.00 in her checking account.

Appellant testified at the oral hearing on July 16, 2014 and stated that she was the only member of her household receiving income as her husband had injured himself. She stated that her mortgage was \$312.00 per month. Appellant testified that she had a car payment of \$320.00. She stated that her monthly expense for food was \$200.00. Appellant also stated that the household expense for gasoline was \$200.00. She testified that her miscellaneous expenses were \$50.00 to \$100.00 a month, that her electric bill was \$200.00 per month and her cable TV bill was \$83.00 per month. Appellant stated that her telephone bill was \$173.00 for two cellular telephones and the car insurance for both cars was \$178.00 per month. She stated that her property taxes were \$300.00 per year. The hearing representative requested copies of appellant's monthly bills to support her expense allegations.

Appellant provided an electric bill from August 2014 in the amount of \$143.60. She also provided a portion of her checking account statement from May 30 to June 30, 2014 indicating a balance of \$1,399.92 following debts of \$87.48 for cable TV, \$115.12 for electricity, \$184.48 for telephone, \$317.63 for a car loan, \$183.35, and \$96.63 for insurance. Appellant's income included a deposit of \$3,016.16 and a \$1,900.00 withdrawal in cash. She stated that she had additional expenses of groceries, cigarettes, gas, dog food, cleaning supplies, medications, and physician's bills.

By decision dated August 22, 2014, the hearing representative found that appellant had received an overpayment of compensation in the amount of \$3,483.77 for the period July 30, 2011 through November 16, 2013. He further found that she was without fault in the creation of the overpayment. The hearing representative found that appellant had monthly gross income of \$3,560.00 every 28 days or \$3,267.51 per month. He stated that she listed expenses of \$2,570.00 on the overpayment recovery questionnaire, but at the hearing offered expenses of \$1,591.00. The hearing representative determined that even assuming appellant had expenses of \$2,570.00, with an income of \$3,267.51, her income exceeded her expenses by \$697.51 per month. He found that she was not entitled to waiver. The hearing representative then determined that appellant was capable of repaying the debt with monthly payments of \$216.66 or \$200.00 every 28 days.

LEGAL PRECEDENT -- ISSUE 1

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.² The coverage for basic life insurance is effective unless waived,³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee

² 5 U.S.C. § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁵ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,⁶ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.⁷

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).⁸

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.⁹ Any employee who does not file a life insurance election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.¹⁰ When an under-withholding 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

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.¹² When an overpayment has been made to an individual because of an error of fact or law,

⁵ *Id.* at § 8706.

⁶ *Id.* at § 8707(b)(2).

⁷ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that the claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

⁸ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁹ 5 C.F.R. § 870.504(a)(1).

¹⁰ *Id.* at 504(b).

¹¹ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹² *Id.* at § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹³

A final decision of OWCP shall contain findings of fact and a statement of reasons.¹⁴ With respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$3,483.77 for the period July 30, 2011 through November 16, 2013.

Appellant elected to receive compensation from OWCP instead of retirement benefits from OPM effective July 30, 2010. While in compensation status, she remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance at whatever option she had selected.¹⁶ The only evidence in the record addressing appellant's election of optional life insurance is the November 19, 2013 letter from OPM stating that her postretirement election was at the no reduction option and that the commencing date for postretirement deductions was to be July 30, 2011. The code is C0 which correlates to the no reduction option of postretirement basic life insurance.¹⁷

OWCP procedures state that the preliminary notice of overpayment must clearly set forth the reason for the overpayment and contain a clearly written explanation as to how the overpayment was calculated.¹⁸ In this case, the hearing representative simply relied on a statement from OPM and placed the burden on appellant to disprove the fact of the election. A claimant is entitled to an adequate statement of reasons with respect to any final decision by OWCP.¹⁹

In the *N.J.* case,²⁰ the Board remanded the case to OWCP for further development because the evidence was unclear as to why postretirement optional life insurance premiums had been deducted as of a certain date. Similarly, in this case the evidence fails to establish the basis

¹³ *Id.* at § 8129(a).

¹⁴ *G.A.*, Docket No. 15-0095 (issued April 2, 2015); *O.R.*, 59 ECAB 432 (2008).

¹⁵ *Id.*

¹⁶ *See supra* note 11.

¹⁷ FECA Bulletin No. 12-02 (February 24, 2012).

¹⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

¹⁹ *See L.D.*, Docket No. 12-1408 (issued April 26, 2013) (finding that OWCP did not provide adequate reasons for calculating an overpayment when the record contained no worksheets or other specific documentation confirming the amount of compensation received).

²⁰ Docket No. 13-2164 (issued April 18, 2014).

for the optional postretirement life insurance premiums at the no reduction option as the signed form is not in the record.

Appellant would be responsible for the additional cost associated with his election of the optional postretirement basic life insurance; however, as OWCP has not factually established that she elected the optional coverage, there can be no finding of overpayment. The case will be remanded to OWCP.²¹ On remand, OWCP should obtain from OPM the executed election form completed by appellant prior to determining whether she received an overpayment of compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$3,483.77 during the period July 30, 2011 through November 16, 2013.²²

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.²³

Issued: January 28, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²¹ See generally *id.* (finding that the information from OPM did not sufficiently establish the date that a claimant's deductions for postretirement basic life began); *D.R.*, Docket No. 13-1531 (issued October 21, 2013) (finding that OWCP improperly found that a claimant received dual benefits from OPM and OWCP when the record did not contain clear documentation establishing that he received benefits from OPM during the period in question).

²² In view of the Board's finding that the case is not in posture for decision regarding fact of overpayment, it is premature to address the issue of waiver and recovery.

²³ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.