

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

S.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 11-895
Issued: December 5, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On February 22, 2011 appellant filed a timely appeal from a January 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 OWCP properly found that an overpayment of \$1,591.98 occurred; (2) whether it properly denied waiver of the overpayment; and (3) whether OWCP properly found the overpayment should be recovered by deducting \$300.00 monthly from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 4, 2005 appellant, then a 43-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries as a result of casing mail on December 30, 2004. OWCP accepted the claim for aggravation of bilateral bicipital tendinitis, aggravation of neck and lumbar strains and aggravation of lumbar disc displacement without myelopathy. On January 22, 2007 it also accepted temporary aggravation of adjustment disorder with anxiety and depression.

Appellant submitted a claim for compensation (Form CA-7) dated November 22, 2005 for the period commencing February 14, 2005. The claim form indicated that appellant had basic life insurance (BLI) and optional life insurance (OLI). On January 31, 2006 OWCP issued a compensation payment of \$47,454.58 for the period February 14, 2005 to August 5, 2006. No deductions were made for either BLI or OLI. Appellant was advised by letter dated July 31, 2006, that her continuing compensation payments commencing August 6, 2006 would include a deduction of \$43.20 for optional life insurance.

The record contains a memorandum of telephone call dated July 12, 2010, indicating that the employing establishment confirmed that appellant continued to have BLI and OLI coverage. The claims examiner noted that BLI premiums had not been deducted.

By letter dated July 14, 2010, OWCP advised appellant of a preliminary determination that an overpayment of \$1,591.58 had occurred. Appellant was found not to be at fault in creating the overpayment. OWCP explained that, for the period February 14, 2005 to June 5, 2010, no deductions for BLI had been made. In addition, for the period February 14, 2005 to August 5, 2006, no deductions for OLI were made. A worksheet form indicated that the BLI deduction for the period February 14, 2005 to June 5, 2010 should have been \$1,038.21. In addition, while OWCP had deducted \$2,160.00 for OLI premiums from August 6, 2006 to June 5, 2010, they should have deducted \$553.37 for OLI premiums from February 14, 2005 to August 5, 2006. Combining the \$1,038.21 for BLI and \$553.37 for OLI resulted in a \$1,591.58 overpayment of compensation. It included an overpayment recovery questionnaire (Form OWCP-20) and advised appellant to submit supporting financial evidence within 30 days on the issue of waiver of the overpayment.

On August 16, 2010 OWCP issued a final decision as to an overpayment of \$1,591.58. It found appellant was not entitled to waiver of the overpayment as she had submitted no financial information. In addition, OWCP found the overpayment should be recovered by deducting \$300.00 from continuing compensation payments.

On August 17, 2010 OWCP received a request for a prerecoupment hearing on the waiver issue. The postmark of the letter was August 12, 2010. Appellant submitted an OWCP-20 form dated July 24, 2010, showing monthly income of \$2,626.72 and monthly expenses of \$2,960.00.

By decision dated August 18, 2010, OWCP vacated the August 16, 2010 decision. It stated that it had been issued prematurely, as additional days should have been allowed for mail

delivery. The decision noted that an OWCP-20 had been received. On August 23, 2010 OWCP received a copy of appellant's bank checking account history from June 12 to August 11, 2010.

In a letter dated September 24, 2010, OWCP advised appellant that a telephonic hearing was scheduled for November 3, 2010 at 9:15 a.m. EST. By decision dated January 14, 2011, an OWCP hearing representative stated that a review of the written record was performed, as appellant did not appear for the hearing. The hearing representative affirmed a \$1,591.58 overpayment of compensation and a finding that appellant was not at fault in creating the overpayment. As to waiver, the hearing representative stated that appellant "has not provided any documentation of her assets, income and expenses" to establish a waiver of the overpayment. OWCP's hearing representative found that the overpayment should be recovered by deducting \$300.00 from the continuing compensation payments.

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 BLI and one or more of the options.² The coverage for basic life is effective unless waived³ and premiums for basic and optional life coverages are withheld from the employee's pay.⁴

FECA⁵ and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her BLI coverage without cost under certain circumstances⁶ and may also retain the OLI.⁷ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationeer" status.⁸ If the compensationeer chooses to continue BLI and OLI insurance coverage, the schedule of deductions made while the compensationeer was an employee will be used to withhold premiums from his or her compensation payments.⁹ Thus while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹⁰

² 5 C.F.R. § 870.201.

³ *Id.* at § 870.204(a).

⁴ *Id.* at § 870.401(a).

⁵ *Id.* at §§ 8101-8193.

⁶ *Id.* at § 870.701, subpart G.

⁷ *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

⁸ *Id.* at § 870.501.

⁹ *Id.* at § 872.410, subpart D.

¹⁰ *Scherri L. Stanley*, 53 ECAB 433 (2002).

ANALYSIS -- ISSUE 1

The record indicates that appellant had chosen BLI and an additional OLI coverage. The November 22, 2005 Form CA-7 indicated that appellant had both BLI and OLI, and no contrary evidence was provided. As noted above, appellant is responsible for payment of the premiums and the premiums must be deducted from compensation payments. The compensation payment from February 14, 2005 to August 5, 2006 did not include any deductions for BLI or OLI premiums. The continuing compensation payments from August 6, 2006 to June 5, 2010 included deductions for OLI premiums, but not for BLI premiums. Therefore an overpayment of compensation has been established.

As to the amount, OWCP provided an explanation as to its calculations. For the period February 14, 2005 to June 5, 2010, appellant owed \$1,038.21 in BLI premiums. Since no deductions were made for BLI premiums, this entire amount is an overpayment. With regards to OLI premiums, appellant owed \$2,713.37 for the period February 14, 2005 to June 5, 2010. OWCP had deducted \$2,160.00 in premiums, and therefore \$553.37 remained as an overpayment of compensation. The Board finds an overpayment of \$1,591.58.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides: “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 [FECA] or would be against equity and good conscience.”¹¹ Since OWCP found appellant to be without fault in the creation of the overpayment, OWCP may only recover the overpayment if recovery would neither defeat the purpose of FECA nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary “needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses,” and, also, if the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹² For waiver under the “defeat the purpose of FECA” standard, appellant must show that she needs substantially all of her current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.¹³

¹¹ 5 U.S.C. § 8129(b).

¹² OWCP procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

¹³ See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

20 C.F.R. § 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴

According to OWCP procedure, the Form OWCP-20 supplied to a claimant by OWCP is designed to obtain financial information about monthly income, monthly expenses and assets. If adequate documentation is not supplied with a submitted Form OWCP-20, OWCP claims examiner should conference the case and request that additional documentation be submitted (or the hearing representative should request additional documentation at the hearing.)¹⁵

ANALYSIS -- ISSUE 2

The record indicates that appellant submitted a Form OWCP-20 on August 17, 2010. On August 23, 2010 appellant submitted a current bank statement with account activity, including payments. OWCP's hearing representative noted the submission of the OWCP-20, without mention of the bank statement. According to the hearing representative, appellant did not provide "any documentation" of income, expenses or assets. OWCP's procedures noted above clearly indicate that when a claimant submits an OWCP-20 (in this case an OWCP-20 and a bank statement) and OWCP finds that there is inadequate documentation of the stated income, expenses and assets, then appellant should be advised of any specific deficiency and given an opportunity to provide additional information.¹⁶ In this case, it did not provide any notice to appellant that further documentation was required. The case will be remanded to OWCP for proper development of the evidence on the waiver issue. After such further development as OWCP deems necessary, it should issue an appropriate decision. In view of the Board's holding, the repayment issue will not be addressed at this time.

CONCLUSION

The Board finds an overpayment of \$1,591.58 was created due to insufficient deductions for BLI and OLI premiums. The case is remanded for additional development on the waiver issue.

¹⁴ 20 C.F.R. § 10.437 (1999).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(4) (October 2004).

¹⁶ See *D.B.* Docket No. 11-256 (issued July 26, 2011); *C.S.* Docket No. 10-2389 (issued June 22, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 14, 2011 is affirmed with respect to fact and amount of overpayment. The decision is set aside and remanded on the waiver issue.

Issued: December 5, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board