



On appeal, appellant alleged that OWCP improperly calculated his earnings and that repaying the overpayment would be an economic hardship.

### **FACTUAL HISTORY**

On October 16, 2008 appellant, then a 51-year-old mail handler, filed a traumatic injury claim alleging that he injured his back pushing a cart in the performance of duty on that date.<sup>2</sup> On December 24, 2008 OWCP accepted this claim for sprain of neck and sprain of the lumbar region of the back. It noted that appellant was entitled to 45 days of continuation of pay beginning after the three-day mandatory waiting period.

In a letter dated January 28, 2009, OWCP reduced appellant's compensation benefits based on his earnings of \$483.92 a week for 20 hours a week and 4 hours of compensation a day under a separate claim.

Appellant telephoned OWCP on January 25, 2010 and stated that his health benefits had been canceled. In a telephone memorandum dated January 27, 2010, the employing establishment stated that the system did not reflect that he had health benefits. Appellant stated that he was awaiting transfer of his health and life insurance to OWCP.

On a form entitled Health Benefits Checklist Sheet, the claims examiner indicated that appellant's health benefits were terminated on December 8, 2008. The claims examiner indicated that appellant's health plan, code JC2, should have received \$6,953.17 from appellant for the period December 8, 2008 through May 8, 2010. OWCP also failed to deduct \$293.58 for basic life insurance and \$1,400.58 for optional life insurance, code Z1, payments from December 8, 2008 through May 8, 2010 for a total of \$8,647.33. It provided a worksheet dated August 20, 2010 which provided that appellant's health benefit insurance premium was \$439.93, that his basic life insurance was \$23.28 and that his optional life insurance was \$111.29 for the period December 8, 2008 through January 17, 2009. OWCP provided a calculator printout of additional calculations totaling \$6,953.17 from him, \$293.58 for basic life and \$1,400.58 for optional life insurance. It completed a second worksheet on September 22, 2010 covering the period December 7, 2008 through May 8, 2010 and finding that appellant's health benefit insurance premium totaled \$6,963.56, that his basic life insurance premium totaled \$294.72 and that his optional life insurance premium was \$1,408.71 or \$8,666.99.

In a letter dated September 22, 2010, OWCP informed appellant it had reached a preliminary determination that an overpayment in the amount of \$8,666.99 had occurred because health benefits, basic life insurance and optional life insurance benefits were not deducted from his compensation benefits for the period December 7, 2008 through May 8, 2010. It found that he was without fault in the creation of the overpayment and requested financial information if he disputed the overpayment or requested waiver.

Appellant responded on October 8, 2010 and requested that OWCP make a decision based on the written evidence. He completed an overpayment recovery questionnaire and

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<sup>2</sup> On September 1, 1995 OWCP accepted that appellant sustained a lumbosacral strain, laceration of the left ankle, injury to his right thigh and chin due to an August 12, 1995 employment injury.

submitted financial documentation to OWCP on October 8, 2011. Appellant indicated that his monthly income was \$4,976.38. He listed his monthly expenses as \$1,127.97 for rent, \$600.00 for food, \$300.00 for clothing and \$800.00 for utilities. Appellant indicated that he had monthly credit card payments of \$330.00 and other expenses of \$1,678.39 for total monthly expenses of \$4,836.36. He indicated that he had \$288.88 in assets.

By decision dated October 25, 2010, OWCP determined that appellant had received an overpayment in the amount of \$8,666.99 because deductions from health benefits, basic life insurance and optional life insurance were not made for the period December 7, 2006 through May 6, 2010. It determined that he was not at fault in the creation of the overpayment. However, OWCP declined to waive recovery of the overpayment finding that the evidence did not establish that appellant was entitled to waiver nor that collection of the overpayment would defeat the purpose of FECA and that he could repay the debt. It found that appellant's monthly income exceeded his monthly debt by \$140.02 a month and determined that he had \$90.00 available a month for debt repayment. OWCP determined to collect the overpayment through withholding of \$83.08 from appellant's ongoing payments every 28 days.

### **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 duty.<sup>3</sup> 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.<sup>4</sup>

Under the Federal Employees' Group Life Insurance Program (FEGLI), most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>5</sup> The coverage for basic life insurance is effective unless waived<sup>6</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>7</sup> When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to the Office of Personnel Management (OPM) upon discovery of the error.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8702(a).

<sup>6</sup> *Id.* at § 8702(b).

<sup>7</sup> *Id.* at § 8707.

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

The regulations of OPM, which administers the Federal Employees Health Benefit program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.”<sup>9</sup>

In addition, 5 C.F.R. § 890.502(c) provides:

“An agency that withholds less than the proper health benefits contributions from an individual’s pay, annuity or compensation must submit an amount equal to the sum of the uncollected contributions and applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees Health Benefits Fund.”<sup>10</sup>

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.<sup>11</sup> An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>12</sup> The Board has recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

After appellant notified OWCP that his health benefits had been cancelled, it reviewed his pay records and determined that health, basic life and optional life insurance premiums had not been withheld. The record establishes that appellant has received an overpayment of compensation as OWCP failed to deduct his health benefit premiums as well as his basic and optional life insurance premiums from his ongoing compensation benefits.

As to the amount, however, the record contains little probative evidence. As the Board has explained, OWCP needs to support its findings as to the amount of an overpayment for failure to deduct health and life insurance premiums.<sup>14</sup> There is no evidence as to the source of

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<sup>9</sup> 5 C.F.R. § 890.502(a)(1).

<sup>10</sup> *Id.* at § 890.502(c).

<sup>11</sup> *Id.* at § 890.502(a)(1).

<sup>12</sup> *Id.*

<sup>13</sup> *T.S.*, Docket No. 08-1604 (issued March 13, 2009); 5 C.F.R. § 890.502.

<sup>14</sup> *G.K.*, Docket No. 08-1620 (issued July 2, 2009).

the information concerning the premiums due. As such the Board is unable to determine if OWCP calculations were correct. The only evidence in the record is a worksheet that does not explain how the amount was determined. There should be some authorized documentation regarding the proper amount of the health and life insurance premiums for a specific year or specific period, so that appellant, as well as the Board or other reviewers, may be able to determine if the calculation of the overpayment amount was correct. A computerized worksheet that simply indicates the premium for enrollment codes for periods covered is not sufficient documentation. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>15</sup>

The Board notes that OWCP provided two separate dates for calculating the beginning of the overpayment. The initial worksheet was based on an overpayment period December 8, 2008 through May 8, 2010. The preliminary and final overpayment decisions were based on the period December 7, 2008 through May 8, 2010. OWCP did not explain why it selected the various dates used in calculating the overpayment.

The case will accordingly be remanded to OWCP for a proper determination as to the amount of the overpayment. OWCP should issue an appropriate preliminary determination regarding the amount of the overpayment based on the appropriate beginning date. As to the waiver and repayment issues, the Board will not consider these issues at this time. On remand appellant will have an opportunity to submit and have OWCP consider relevant financial evidence on these issues, and OWCP should issue an appropriate final decision on the overpayment issues presented.

### **CONCLUSION**

The Board finds an overpayment was created due to the failure to deduct health benefit and life insurance premiums from December 8, 2008 to May 8, 2010, but the case requires further explanation as to the amount and the appropriate date to begin the calculations. The case is not in posture for decision with respect to waiver and repayment.

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<sup>15</sup> See *Jenny M. Drost*, 56 ECAB 587 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 25, 2010 is affirmed with respect to fact of overpayment. The case is set aside and remanded with respect to additional overpayment issues.

Issued: September 22, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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