

FACTUAL HISTORY

On August 17, 1981 appellant, a sheet metal worker, sustained a traumatic injury in the performance of duty. OWCP accepted the claim for left ankle sprain with chronic synovitis.²

Appellant returned to work as an engineering aid on July 29, 1991. In a formal loss of wage-earning capacity (LWEC) decision dated March 2, 1992, OWCP reduced his compensation benefits to reflect his actual wages in that capacity. During appellant's modified employment, the employing establishment made appropriate deductions for basic life insurance.

Appellant stopped working for the employing establishment on February 12, 1996 when he took a job in the private sector. By letter dated June 26, 1996, the Office of Personnel Management (OPM) notified OWCP and appellant that he was eligible to continue basic life insurance coverage and that premiums were to be deducted effective February 12, 1996. The record reflects, however, that OWCP did not deduct life insurance premiums from appellant's compensation payments until May 7, 2011.

On August 7, 2007 appellant informed OWCP by telephone that life insurance premiums were not being withheld from his compensation payments. On January 6 and February 11, 2011 he made follow-up telephone calls requesting information regarding his life insurance deductions. In a letter dated February 18, 2011, appellant informed OWCP that he had been attempting for years to find out why life insurance premiums had not been deducted from his compensation, contending that he should not have to "pay back time" in order to receive insurance.

In a letter dated March 31, 2011, OWCP informed appellant that there had been an underwithholding of life insurance premiums and that the entire amount was deemed an overpayment of compensation. It enclosed copies of his Life Insurance Election form (dated February 15, 1982) and the FEGLI transfer letter from OPM (dated June 25, 1996), requesting that appellant complete enclosed forms if he wished to continue his life insurance coverage. Appellant was instructed that he should notify OWCP in writing should he no longer want life insurance.

The record contains a FEGLI life insurance election form, dated April 10, 2011, whereby appellant elected Option B (additional coverage) in the amount of five times his pay. In a FEGLI designation of beneficiary form dated April 10, 2011, appellant designated his wife as the sole beneficiary of his policy.

By letter dated June 13, 2011, OWCP advised appellant of a preliminary determination that an overpayment of \$8,366.89 had occurred, due to the fact that no deductions for basic life

² This is the second time this case has been before the Board. In a decision dated November 4, 1997, the Board affirmed OWCP's June 4, 1996 overpayment decision. The Board also set aside OWCP's August 13, 1996 nonmerit decision finding that appellant had made an untimely request for reconsideration of a March 2, 1992 wage-earning capacity decision and remanded the case for a determination as to whether the wage-earning capacity decision should be modified. Docket No. 97-640 (issued November 4, 1997).

insurance premiums had been made from February 12, 1996 through May 7, 2011.³ Appellant was found not to be at fault in creating the overpayment. OWCP 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 July 7, 2011 appellant submitted a request for review of the written record, contending that he had not received an overpayment because he did not receive life insurance after he left the employing establishment. He submitted an overpayment recovery questionnaire and supporting documents reflecting monthly income in the amount of \$4,918.00 and monthly expenses in the amount of \$4,588.00. Assets included a checking account in the amount of \$400.00.⁴

By decision dated August 10, 2011, an OWCP hearing representative finalized the overpayment of \$8,366.89. Although appellant was not at fault in the creation of the overpayment, he was not entitled to waiver because recovery would neither defeat the purpose of FECA nor be against equity and good conscience.⁵ The hearing representative found that appellant's monthly income was \$5,014.88, (OWCP compensation benefits, social security benefits and private pension in the respective amounts of \$1,256.00, \$3,171.00 and \$587.00) and monthly expenses totaled \$4,300.71. Noting that appellant had a positive monthly cash flow of \$714.17, he found that the overpayment would be recovered by deducting \$250.00 every four weeks from appellant's continuing compensation payments and that such recovery would not defeat the purposes of FECA or be against equity and good conscience.⁶

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.⁷ The coverage for basic life is effective unless waived⁸ and premiums for basic and optional life coverages are withheld from the employee's pay.⁹

³ The claims examiner calculated the unpaid premiums as follows: From February 12, 1996 through February 11, 2003 -- (Option A: \$150.63; Option B: \$2,244.31); February 12, 2003 through January 30, 2008 -- (Option A: \$175.69; Option B: \$2,459.59); February 1, 2008 through May 7, 2011 -- (Option A: \$215.42; Option B: \$3,121.25), for a total of \$8,366.89.

⁴ Appellant listed his monthly income as follows: social security -- \$3,171.00; OWCP -- \$1,160.00; wife's retirement -- \$587.00. Monthly expenses were identified as follows: food -- \$800.00; clothing -- \$300.00; rent -- 722.00; electricity -- \$260.00; water -- \$60.00; telephone -- \$161.00; loan payment -- 165.71; gas -- \$200.00; car loans -- \$575.00; cable -- \$116.00; school -- \$180.00; household expenses -- \$150.00; car insurance -- \$76.00; life insurance -- \$300.00; First South loan -- \$284.00; Quality First loan -- \$105.00; Hobby Furniture -- \$50.00; dentist -- \$50.00; hospital -- \$100.00; Weinstein -- \$100.00. (\$4,754.00).

⁵ The hearing representative found that appellant's monthly income exceeded his expenses by more than \$500.00.

⁶ The claims examiner noted that the figures provided by appellant reflected a positive monthly cash flow in excess of \$500.00.

⁷ 5 C.F.R. § 870.201.

⁸ *Id.* at § 870.204(a).

⁹ *Id.* at § 870.401(a).

FECA and its implementing regulations provide that an employee entitled to disability compensation benefits may continue BLI coverage without cost under certain circumstances¹⁰ and may also retain the OLI.¹¹ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.¹² If the compensation chooses to continue BLI and OLI insurance coverage, the schedule of deductions made while the compensation was an employee will be used to withhold premiums from his or her compensation payments.¹³ Thus while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹⁴

ANALYSIS -- ISSUE 1

The record establishes that appellant elected basic life insurance coverage. As noted, he is responsible for payment of the premiums and the premiums must be deducted from his compensation payments. The compensation payments from February 12, 1996 through May 7, 2011 did not include any deductions 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 12, 1996 through May 7, 2011, appellant owed \$8,366.89 in BLI premiums. Since no deductions were made for BLI premiums during this period, this entire amount is an overpayment of compensation. The Board finds an overpayment of \$8,366.89.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA provides that 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.¹⁵ Since OWCP found appellant to be without fault in the creation of the overpayment, it may recover the overpayment only 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

¹⁰ *Id.* at § 870.701, subpart G.

¹¹ *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

¹² *Id.* at § 870.501.

¹³ *Id.* at § 872.410, subpart D.

¹⁴ *Scherri L. Stanley*, 53 ECAB 433 (2002).

¹⁵ 5 U.S.C. § 8129(b).

determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁶ 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.¹⁷

Title 20 Code of Federal Regulations section 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.¹⁸

ANALYSIS -- ISSUE 2

The fact that appellant is without fault in creating the overpayment does not preclude OWCP from collecting the overpayment. Appellant is still required to repay the debt unless: (1) recovery of the overpayment would defeat the purpose of FECA; or (2) recovery of the overpayment would be against equity and good conscience as set forth in 20 C.F.R. §§ 10.434 and 10.437. Although appellant inquired about the withholding of his basic life premiums in 1997 and 2011, this does not negate his obligation of the overpayment.

In determining that he was not entitled to a waiver of the recovery of the overpayment, OWCP reviewed appellant's income, expenses and assets as listed in his July 7, 2011 overpayment recovery questionnaire. Based on the figures and financial documentation supplied by appellant, the claims examiner found that his monthly household income was \$5,014.88, (OWCP compensation benefits, social security benefits and private pension in the respective amounts of \$1,256.00, \$3,171.00 and \$587.00) and monthly expenses totaled \$4,300.71, leaving appellant with a positive monthly income of \$714.17. The Board notes that OWCP's calculations differed from appellant's, which would provide appellant a positive monthly cash flow of \$500.00. OWCP procedures, however, provide that 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 \$50.00.¹⁹ Therefore, as appellant's monthly income exceeds his monthly expenses by \$714.17 according to OWCP's calculations, or \$500.00 according to appellant's calculations, he is not entitled to waiver as he does not need substantially all of his income to meet current ordinary and necessary expenses.

There is no evidence in this case, and appellant did not allege, that he relinquished a valuable right or changed his position for the worse in reliance on the excess compensation he

¹⁶ 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).

¹⁷ See *Robert E. Wenzholz*, 38 ECAB 311 (1986).

¹⁸ 20 C.F.R. § 10.437 (1999).

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(3) (October 2004).

received for the period in question. Pursuant to its regulations, OWCP, therefore, properly found that recovery of the overpayment would not be against equity or good conscience. 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.²⁰

As the evidence in this case fails to support that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP did not abuse its discretion in denying a waiver of recovery of the overpayment of \$8,366.89.

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 that, 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.²¹

ANALYSIS -- ISSUE 3

With respect to the \$250.00 withheld from appellant's continuing compensation payments to recoup the amount of the outstanding payment, OWCP's regulations note the factors to be considered in determining repayment from continuing compensation.²² The implementing regulations provide that OWCP must take 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.²³

OWCP found that recovery of the overpayment would be made by an adjustment against continuing compensation at the rate of \$250.00 per payment. It is appellant's responsibility to provide information about income, expenses and assets.²⁴ The financial evidence indicated that his monthly income exceeded his expenses by \$500.00 using appellant's calculations and that he has assets in the amount of \$500.00. Based on the evidence, OWCP took relevant evidence into account so as to minimize hardship in recovering the overpayment. The Board finds that it

²⁰ *Keith H. Mapes*, 56 ECAB 130 (2004).

²¹ 20 C.F.R. § 10.441.

²² *Id.*; see *Fred A. Cooper, Jr.*, 44 ECAB 498 (1994).

²³ *Id.*

²⁴ 20 C.F.R. § 10.441(a).

properly followed its regulations in this case and in determining that the \$8,366.89 overpayment could be recovered by deducting \$250.00 from appellant's continuing compensation payments.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of \$8,366.89 during the period February 12, 1996 through May 7, 2011 and OWCP properly denied waiver of the recovery of the overpayment. The Board further finds that OWCP also properly directed recovery of the overpayment by deducting \$250.00 every 28 days from continuing compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2011 is affirmed.

Issued: August 24, 2012
Washington, DC

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

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

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

²⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(3) and 6.200.4.d(1)(b) (May 2004).