

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

R.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Albuquerque, NM, Employer**

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**Docket No. 11-1303
Issued: January 9, 2012**

Appearances:

*Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2011 appellant, through his attorney, filed a timely appeal from the March 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 met its burden of proof to establish that appellant received a \$3,689.38 overpayment of compensation; and (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

¹ 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board. In a June 16, 2010 decision,² the Board reversed OWCP's September 1, 2009 decision finding that appellant received a \$3,689.38 overpayment of compensation and that the overpayment was not subject to waiver. The Board found that OWCP did not adequately explain how the overpayment occurred and that he would not be able to understand the precise defect of his claim and the kind of evidence which would tend to overcome it. The Board noted that the overpayment calculation appeared to be based, at least in part, on a June 8, 2009 worksheet completed by Tim Cooper, an OWCP benefits consultant. The worksheet was not provided to appellant in connection with OWCP's preliminary overpayment determination and several of the calculations contained in the worksheet were not adequately explained or supported by the record.³

In a July 8, 2010 notice, OWCP advised appellant of its preliminary determination that he received a \$3,689.38 overpayment of compensation "because Optional B freeze premiums were not being collected."⁴ It made a preliminary determination that he was not at fault in the creation of the overpayment. OWCP advised appellant that he could submit evidence challenging the fact, amount or finding of fault and request waiver of the overpayment. It requested that he complete and return an enclosed financial information questionnaire within 30 days even if he was not requesting waiver of the overpayment.

In an accompanying memorandum, OWCP provided a calculation of the overpayment which noted that mistakes in withholding life insurance premiums resulted in amounts of compensation being owed to appellant and amounts which constituted overpayments to him. Although no mention was made of the June 8, 2009 worksheet of Mr. Cooper, it appears that the calculations contained in this memorandum were based on the calculations contained in the

² Docket No. 09-2353 (issued June 16, 2010). OWCP accepted that on July 16, 1990 appellant, then a 50-year-old blind rehabilitation specialist, sustained a work-related permanent aggravation of angina. Appellant retired from the employing establishment in 1991. The record contains an Option B life insurance election form showing that appellant elected to freeze his Option B life insurance at its value when he turned 65 years old.

³ In his June 8, 2009 worksheet finding a \$3,689.38 overpayment, Mr. Cooper indicated that mistakes in withholding life insurance premiums resulted in amounts of compensation being owed to appellant and amounts which constituted overpayments to appellant. Mr. Cooper asserted that appellant was owed \$76.82 because between June 26, 1994 and October 30, 2004 improper figures were used for basic life insurance premiums. Appellant was owed \$567.60 because between September 4, 2005 and December 20, 2008 OWCP improperly deducted basic life insurance premiums as he was over 65 years old during this period. Mr. Cooper claimed that appellant received a \$663.53 overpayment because basic life insurance premiums were not deducted between June 1, 1991 and June 25, 1994. Appellant was owed \$879.84 because between September 4, 2005 and April 11, 2009 postretirement "0 percent reduction premiums" were deducted instead of "50 percent reduction premiums." He received a \$1,148.16 overpayment because a "postretirement under deduction of premiums" was made between June 26, 1994 and June 15, 2002. Mr. Cooper asserted that appellant received a \$3,402.05 overpayment because Option B freeze payments were not collected between December 1, 2004 and September 3, 2005. To conclude that appellant received a \$3,689.38 overpayment of compensation, Mr. Cooper offset the amounts owed to appellant against the amounts found to constitute overpayments of compensation.

⁴ In another part of the notice, OWCP indicated that Option B freeze premiums were not collected for the period June 1, 1991 to June 24, 1994.

June 8, 2009 worksheet.⁵ However, no further explanation of the calculations contained in the June 8, 2009 worksheet was provided. OWCP did not provide any further documents in support of the calculations.

Appellant requested a hearing with an OWCP hearing representative regarding the overpayment matter. At the December 15, 2010 hearing, counsel contended that OWCP did not adequately explain the fact and amount of the claimed overpayment. On January 4, 2011 appellant completed a financial information questionnaire in which he indicated that he had \$3,633.00 in monthly income and \$3,500.00 in monthly expenses.

In a March 24, 2011 decision, an OWCP hearing representative determined that appellant received a \$3,689.38 overpayment of compensation and that the overpayment was not subject to waiver. She provided another recitation of the calculations contained in the July 8, 2010 preliminary overpayment notice, but did not provide any additional explanation of the calculations. The hearing representative reviewed the financial information provided by appellant and determined that the overpayment was not subject to waiver. She asserted that some of the monthly expenses listed by him were inflated and were not adequately supported by documentation. It was determined that appellant could repay the overpayment at a rate of \$150.00 per month.

LEGAL PRECEDENT

Section 8102(a) of 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.⁶ Section 8129(a) of FECA provides, in pertinent part, “When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.”⁷

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.⁸ The coverage for basic life insurance is effective unless waived⁹ and the premiums for basic and optional life coverage are withheld from the employee’s pay.¹⁰ While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee’s compensation.¹¹ At separation from the employing establishment, the

⁵ See *infra* note 3.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8702(a).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

¹¹ *Id.* at § 8707(b)(1).

FGLI insurance will either terminate or be continued under “compensationeer” status. If the compensationeer chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his compensation payments.¹² 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 the Office of Personnel Management upon discovery of the error.¹³

In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.¹⁴ OWCP procedure further specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”¹⁵ These requirements are supported by Board precedent.¹⁶

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to establish that appellant received a \$3,689.38 overpayment of compensation.

In a July 8, 2010 notice, OWCP advised appellant of its preliminary determination that he received a \$3,689.38 overpayment of compensation stating that the overpayment occurred “because Optional B freeze premiums were not being collected.” It provided a calculation of the overpayment which appears to have been based on a June 8, 2009 worksheet in which Mr. Cooper, an OWCP benefits technician, provided calculations ostensibly showing a \$3,689.38 overpayment of compensation.¹⁷

Despite the fact that the July 8, 2010 notice contains the substance of the June 8, 2009 worksheet of Mr. Cooper, the nature of the claimed overpayment was not adequately explained.¹⁸ As noted in the prior decision, the June 8, 2009 worksheet was not sufficient, of itself, to explain or support the overpayment calculations. For example, Mr. Cooper claimed that appellant received a \$663.53 overpayment because basic life insurance premiums were not deducted between June 1, 1991 and June 25, 1994. The record reveals that appellant retired in 1991 but it

¹² *Id.* at § 8706(b).

¹³ *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2204); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁴ *Id.* at § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

¹⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

¹⁶ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

¹⁷ There is no indication that appellant was provided with this worksheet in connection with OWCP’s preliminary overpayment determination.

¹⁸ The March 24, 2011 decision finalizing the \$3,689.38 overpayment does not contain any additional information regarding the nature of the overpayment.

does not contain any documents showing whether or when he elected to have basic life insurance coverage after his retirement. Mr. Cooper asserted that appellant received a \$1,148.16 overpayment because a “postretirement under deduction of premiums” was made between June 26, 1994 and June 15, 2002. However, there is no explanation of the nature of these premiums or why it was felt that they were not fully deducted for this period. Mr. Cooper stated that appellant received a \$3,402.05 overpayment because Optional B freeze payments were not collected between December 1, 2004 and September 3, 2005 but OWCP’s preliminary overpayment determination also indicated that this noncollection occurred between June 1, 1991 and June 25, 1994. The Board also notes that OWCP did not provide any further documents in support of the overpayment calculations such as documents showing when appellant might have started certain insurance coverages or documents showing the amount of his insurance premiums.

Although OWCP provided additional information in support of its calculation of a \$3,689.38 overpayment of compensation, it still failed to address many of the deficiencies outlined by the Board in its June 16, 2010 decision reversing OWCP’s finding of an overpayment. For these reasons, it did not meet its burden of proof to show that appellant received a \$3,689.38 overpayment of compensation. As noted above, its burden of proof includes providing a given claimant with fact findings and reasoning which would allow the claimant to understand the precise nature of the determination being made by OWCP.¹⁹ This burden of proof was not met by OWCP in the present case.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to show that appellant received a \$3,689.38 overpayment of compensation.

¹⁹ See *supra* note 15. Because OWCP has not established the existence of an overpayment of compensation, it is not necessary to consider whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2011 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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