

FACTUAL HISTORY

On April 9, 2001 appellant, then a 40-year-old city letter carrier, filed a traumatic injury claim alleging that he twisted his left knee in the performance of duty. OWCP accepted his claim for left knee strain on May 4, 2001. Appellant underwent an arthroscopic medial meniscectomy of his left knee on July 6, 2001. He returned to light-duty work on August 10, 2001. OWCP granted appellant a schedule award for nine percent impairment of his left lower extremity on May 6, 2003.

Appellant accepted a light-duty job on August 11, 2010. He filed a claim for compensation requesting wage-loss compensation from August 11 through September 24, 2010. OWCP authorized compensation in the amount of \$2,928.25 for this period. It did not make deductions for health or life insurance premiums. Appellant filed a second claim for compensation for the period September 20 through December 3, 2010. OWCP authorized compensation for this period in the amount of \$3,595.80 and made deduction for basic life insurance, optional life insurance and health insurance. Appellant requested wage-loss compensation from December 6 through 31, 2010. OWCP made deductions for health and life insurance and authorized compensation in the amount of \$2,567.19. Appellant requested compensation from January 3 through February 25, 2011. OWCP paid \$5,678.00 and did not make deductions for health or life insurance premiums. Appellant requested compensation benefits from February 26 through April 22, 2011. OWCP did not make deductions and paid compensation in the amount of \$5,766.80. Appellant requested compensation from April 23 through June 17, 2011. OWCP authorized compensation for this period in the amount of \$5,774.00 without making deductions for health and life insurance premiums. Appellant requested compensation from June 18 through August 12, 2011. OWCP authorized compensation in the amount of \$5,774.00 for this period and did not make any deductions for health or life insurance premiums. On October 17, 2011 appellant requested compensation benefits for the period August 13 through October 7, 2011. OWCP authorized compensation in the amount of \$5,134.08 and made deductions for health insurance, as well as basic and optional life insurance premiums. Appellant requested compensation from October 8 through December 2, 2011. In a letter dated December 19, 2011, OWCP authorized compensation in the amount of \$5,134.08 and deducted amounts for health benefits as well as basic and optional life insurance.

In a letter dated May 17, 2012, OWCP informed appellant that it had made a preliminary determination that he had received an overpayment of compensation in the amount of \$1,612.68 during the period August 11, 2010 intermittently through August 12, 2011 as health, basic and optional life insurance premiums were not deducted. It found that appellant was not at fault in the creation of the overpayment. OWCP requested that appellant complete an overpayment recovery questionnaire and allowed 30 days for a response.

By decision dated June 18, 2012, OWCP finalized the overpayment and determined that waiver of recovery of the overpayment was not appropriate. It included detailed accounting of the periods of health and life insurance benefits owed and the amounts listing the periods as August 11 through 28; August 29 through September 24, 2010, January 3 through 15, January 16 through June 4 and June 5 through June 17, 2011. OWCP found that appellant owed \$1,077.42 in health benefits, \$95.78 in basic life insurance benefits and \$439.48 in optional life insurance

benefits for a total overpayment of \$1,612.68. It determined that appellant should repay the debt in the amount of \$100.00 per month.²

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 or her duty.³ 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.⁴

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.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁷ When an under withholding 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.⁸

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.”⁹

² The record does not establish that OWCP has entered appellant on the periodic rolls.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

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

⁹ 5 C.F.R. § 890.502(a)(1).

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.”¹⁰

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee’s share of the cost of enrollment.¹¹ An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.¹² The Board has recognized that, when an under withholding 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.¹³

ANALYSIS -- ISSUE 1

The record establishes that OWCP failed to withhold appellant’s basic and optional life insurance premiums as well as his health insurance premiums for the periods August 11 to September 24, 2010 and January 3 through August 12, 2011. It found that appellant owed \$1,077.42 in health benefits, \$95.78 in basic life insurance benefits and \$439.48 in optional life insurance benefits for a total overpayment of \$1,612.68. The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,612.68 intermittently during the period August 11, 2010 to August 12, 2011.

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment.¹⁴ An individual should always be found without fault where the overpayment resulted from OWCP’s error in the under deduction of health benefits or life insurance premiums.¹⁵

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless: (1) adjustment or recovery of the overpayment would defeat the purpose of

¹⁰ *Id.* at § 890.502(c).

¹¹ *Id.* at § 890.502(a)(1).

¹² *Id.*

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

¹⁴ *See, e.g., Harold W. Steele*, 38 ECAB 245 (1986) (no waiver is possible if the claimant is not without fault in helping to create the overpayment); *C.N.*, Docket No. 12-975 (issued October 5, 2012).

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b) (June 2009).

FECA; or (2) adjustment or recovery of the overpayment would be against equity and good conscience.¹⁶

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specific by OWCP. This information is needed to determine whether or not recover of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.¹⁷

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that he was without fault does not preclude OWCP from recovering all or part of the overpayment.¹⁸ Appellant did not submit a response to OWCP's preliminary determination or submit an overpayment recovery questionnaire. Therefore OWCP acted properly in refusing his request for waiver of recovery of the overpayment under the implementing federal regulations. It was precluded from evaluating waiver of the overpayment.¹⁹

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁰ While appellant has been receiving compensation benefits from OWCP for more than one year, OWCP has not entered appellant on the periodic rolls and he is not automatically entitled to further compensation benefits. As appellant is not receiving compensation based on the periodic rolls, but must establish entitlement to each period of disability claimed through a Form CA-7, the Board does not have jurisdiction to review OWCP's requested repayment method.²¹

¹⁶ 20 C.F.R. § 10.434. See 5 U.S.C. § 8129(b).

¹⁷ *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476 (2001).

¹⁸ See *George A. Rodriguez*, 57 ECAB 224 (2005); *C.N.*, *supra* note 14.

¹⁹ 20 C.F.R. § 10.438(b). Failure to submit the requested information within 30 days of the request shall result in denial of the waiver and no further request for waiver shall be considered until the requested information is furnished.

²⁰ *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²¹ 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 the 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 facts so as to minimize any hardship. 20 C.F.R. § 10.441(a). See also *G.B.*, Docket No. 11-1568 (issued February 15, 2012).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,612.68 due to the under deduction of health, life and basic insurance premiums for the period August 11, 2010 through August 12, 2011 intermittently. The Board further finds that OWCP properly denied waiver of recovery the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 28, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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