



sprain and thrombophlebitis and paid disability compensation for the period March 3, 2001 to May 4, 2013. Payments were suspended on October 26, 2011 due to appellant's failure to submit a completed Form EN1032 and reinstated on November 20, 2011 following receipt of this document.

OWCP outlined appellant's entitlement to compensation benefits in an August 16, 2001 letter. It indicated that no amount would be withheld for postretirement basic life insurance (PRBLI). OWCP advised, "If you have basic or optional life insurance and/or health benefits coverage, but no deduction for it is listed above, contact [OWCP] immediately. You are still responsible for these premiums."

A PS Form 50 Notification of Personnel Action dated June 6, 2005 stated that appellant was on disability retirement. In a Form RI 76-13 dated December 22, 2005, the Office of Personnel Management (OPM) confirmed that he continued to receive compensation benefits, enrolled in PRBLI and elected to maintain 100 percent basic life insurance (BLI) coverage. Withholdings for "No Reduction" were to commence on "Compensation Date."<sup>2</sup> OWCP first deducted for PRBLI on October 26, 2011.

On December 2, 2011 OWCP made preliminary findings that appellant received an overpayment of \$12,100.35 because withholdings for PRBLI were not made for the period March 3, 2001 to October 25, 2011.<sup>3</sup> Appellant was without fault in the creation of the overpayment and informed of his options if he wished to contest the overpayment or request waiver. On January 6, 2012 OWCP modified these findings to reflect that he was at fault in the creation of the overpayment because he failed to provide information that he knew or should have known to be material and accepted payments that he knew or should have known to be incorrect.

Appellant requested a prerecoupment hearing, which was held on June 11, 2012. He testified that OWCP failed to properly deduct life insurance premiums from his compensation payments.

By decision dated August 3, 2012, OWCP's hearing representative finalized the \$12,100.35 overpayment and affirmed that appellant was at fault in its creation.

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

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<sup>2</sup> See *infra* note 8.

<sup>3</sup> The case record contains a screenshot of a computerized PRBLI calculator showing that \$12,100.35 should have been deducted for PRBLI for the period March 3, 2001 to October 25, 2011.

<sup>4</sup> 5 U.S.C. § 8102(a).

When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made by decreasing later payments to which the individual is entitled.<sup>5</sup>

Under the Federal Employees' Group Life Insurance (FEGLI) Program, most civilian employees of the Federal Government are eligible to enroll in BLI and other options. Premiums are withheld from an employee's pay.<sup>6</sup> These premiums are still withheld while an employee is receiving disability compensation.<sup>7</sup> When an individual separates from federal employment, FEGLI coverage will either terminate or be continued under compensation status. If the compensation chooses to continue coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>8</sup> Thus, a former employee who receives disability compensation in lieu of retirement benefits is still responsible for all insurance premiums.<sup>9</sup>

When premiums are underwithheld, an overpayment arises because OWCP must pay the full amount to OPM upon discovery of the error.<sup>10</sup>

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

On December 22, 2005 OPM confirmed that appellant was enrolled in PRBLI and elected to maintain 100 percent BLI coverage. Withholdings for appellant's coverage should have commenced on March 3, 2001, the first day that he received compensation benefits. OWCP, however, started to deduct for PRBLI on October 26, 2011. It subsequently calculated that \$12,100.35 should have been withheld for the period March 3, 2001 to October 25, 2011. The Board finds that OWCP properly determined that appellant received an overpayment in the amount of \$12,100.35.

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<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *C.B.*, Docket No. 12-87 (issued May 23, 2012).

<sup>7</sup> 5 U.S.C. § 8707(b)(1).

<sup>8</sup> *Supra* note 6; *Keith H. Mapes*, 56 ECAB 130 (2004). A federal employee who retired or separated on or after December 9, 1980 and continues to receive workers' compensation benefits may enroll in PRBLI if he or she wishes to continue BLI coverage past age 65. He or she may elect to maintain 100 percent BLI coverage at the time of retirement ("No Reduction") or reduce this coverage to 50 percent or 75 percent. Withholdings for "No Reduction" and 50 percent reduction are withheld from compensation benefits on enrollee's date of "retirement" for life insurance purposes and continue for life or until coverage is cancelled or otherwise discontinued. *See* FECA Bulletin No. 12-02 (issued February 24, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15(c)(3) (February 2013) and Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4(b) (August 2004).

<sup>9</sup> *L.D.*, Docket No. 12-1408 (issued April 26, 2013).

<sup>10</sup> *S.H.*, Docket No. 12-166 (issued June 14, 2012); *J.R.*, Docket No. 11-285 (issued September 22, 2011).

## LEGAL PRECEDENT -- ISSUE 2

A waiver of recovery is not possible if the claimant is at fault in the creation of the overpayment.<sup>11</sup> A claimant who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect. Whether or not an individual was at fault depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.<sup>12</sup>

## ANALYSIS -- ISSUE 2

In an August 16, 2001 letter, OWCP notified appellant that no amount would be withheld from his compensation benefits for PRBLI, but advised that he was still responsible for any life insurance premiums and that he report if such deductions were not made. OPM's Form RI 76-13 dated December 22, 2005 confirmed election of PRBLI and 100 percent BLI coverage, but withholdings commenced on October 26, 2011. Thereafter, OWCP found that appellant was at fault in the creation of the overpayment on the grounds that he failed to provide information that he knew or should have known to be material and accepted payments that he knew or should have known to be incorrect.

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment. According to OWCP procedures, a claimant should always be found without fault if the overpayment results from the underwithholding of health or life insurance premiums, unless the claimant had actual knowledge of the calculation error.<sup>13</sup> Under the circumstances of this case, the Board finds the evidence of record on appeal insufficient to establish that appellant actually knew that he received an overpayment for the period March 3, 2001 to October 25, 2011. Consequently, the case will be remanded so that OWCP can consider whether he is entitled to waiver of recovery.<sup>14</sup>

## CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment in the amount of \$12,100.35. The Board further finds that appellant is not at fault in the creation of the overpayment.

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<sup>11</sup> *Donald L. Overstreet*, 54 ECAB 678 (2003); *Gregg B. Manston*, 45 ECAB 344 (1994).

<sup>12</sup> 20 C.F.R. § 10.433. *See also Ralph P. Beachum, Sr.*, 55 ECAB 442, 447 (2004).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009).

<sup>14</sup> *See J.L.*, Docket No. 13-132 (issued June 6, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed with respect to the fact of overpayment and remanded for further proceedings consistent with this opinion of the Board.

Issued: August 12, 2013  
Washington, DC

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

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

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