

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 14-86
Issued: April 14, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2013 appellant filed a timely appeal of a September 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 properly determined that appellant received an overpayment of compensation in the amount of \$2,558.99 from September 24, 2011 through June 21, 2013; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$300.00 from appellant's compensation benefits every 28 days.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 1, 2010 appellant, then a 50-year-old mail processor, filed an occupational disease claim alleging injuries to the right foot and leg as a result of standing and walking in the performance of duty. On June 23, 2010 OWCP accepted her claim for tenosynovitis of the right foot and ankle and a longitudinal tear of the right posterior tibial tendon. On January 13 and 28, 2011 it accepted the additional conditions of rupture of the right posterior tibial tendon, adult-acquired right flat foot deformity and right plantar fibromatosis. Appellant stopped work on September 15, 2010 upon being advised that no work was available within her current physical restrictions. Her compensation was deposited directly into her bank account.

In a February 15, 2011 letter, OWCP advised appellant of her weekly compensation beginning February 13, 2011. The letter listed various forms of life insurance and health benefits and indicated whether deductions were being made. OWCP advised appellant that, if she had basic or optional life insurance and/or health benefits, but no reduction was listed, that she needed to contact OWCP immediately. It informed her that she would be responsible for the premiums. The letter noted that no deductions were being made for Postretirement Basic Life Insurance. In a May 16, 2013 letter to OWCP, an official from the Office of Personnel Management advised that appellant had elected Postretirement Basic Life Insurance and that September 24, 2011 was the commencing date for making deductions for this insurance.

In a July 10, 2013 letter, OWCP advised appellant of its preliminary determination that she received a \$2,558.99 overpayment of compensation because deductions for Postretirement Basic Life Insurance were not made from September 24, 2011 through June 21, 2013. It advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that she complete and submit an enclosed financial questionnaire (Form OWCP-20) within 30 days of the letter.² Appellant did not respond.

In a September 30, 2013 decision, OWCP determined that appellant received a \$2,558.99 overpayment of compensation because deductions for Postretirement Basic Life Insurance were not made for the period September 24, 2011 through June 21, 2013. It found that she was not at fault in creating the overpayment of compensation, but that the circumstances of her case did not warrant waiver of recovery, because she had not provided justification for OWCP to waive recovery of the overpayment. Noting appellant's failure to submit information to support a finding that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience, OWCP required repayment of the overpayment by deducting \$300.00 from her compensation payments every 28 days.

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 basic life insurance and one

² The record contains documents showing that, if deductions had been made for Postretirement Basic Life Insurance during the period September 24, 2011 through June 21, 2013, the deductions would amount to \$2,558.99.

or more of the options.³ The coverage for basic life is effective unless waived⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.⁵

FECA and its implementing regulations provide that an employee entitled to disability compensation benefits may continue his or her basic life insurance coverage without cost under certain circumstances⁶ and may also retain the optional life insurance.⁷ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.⁸ If the compensationner chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationner was an employee will be used to withhold premiums from his or her compensation payments.⁹ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹⁰

When premiums are underwithheld, an overpayment arises because OWCP must pay the full amount to OPM upon discovery of the error.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$2,558.99 overpayment of compensation. Appellant elected to receive Postretirement Basic Life Insurance effective September 24, 2011. While in compensationner status, she remained responsible for all insurance benefits, including the premiums for Postretirement Basic Life Insurance.¹² The record establishes that the deductions for Postretirement Basic Life Insurance during the period September 24, 2011 through June 21, 2013 amounted to \$2,558.99. The Board finds that appellant received a \$2,558.99 overpayment of compensation.¹³

³ 5 C.F.R. § 870.201.

⁴ *Id.* at § 870.204(a).

⁵ *Id.* at § 870.401(a).

⁶ *Id.* at § 870.701, subpart G.

⁷ *Id.* at § 871.201, subpart B.

⁸ *Id.* at § 870.501.

⁹ *Id.* at § 872.410, subpart D.

¹⁰ *Scherri L. Stanley*, 53 ECAB 433, 435 (2002).

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

¹² *See supra* notes 8 through 10.

¹³ *See L.P.*, Docket No. 12-1897 (issued March 15, 2013).

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA¹⁴ provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustments shall be made by decreasing later payments to which an individual is entitled.¹⁵ The only exception to this requirement is found in section 8129(b) of FECA, which provides that adjustments or recovery may not be made when incorrect payments have been made to an individual who is without fault and when such adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁶

Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment.¹⁷ OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, pursuant to the guidelines provided in sections 10.434 and 10.437 of the implementing federal regulations.¹⁸

Section 10.438 of FECA's implementing regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery 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.¹⁹

ANALYSIS -- ISSUE 2

OWCP advised appellant by July 10, 2013 notice of its preliminary determination of the \$2,558.99 overpayment and that she was not at fault in the creation of same. It determined that she was not at fault because she had no notice or knowledge that proper deductions were not being made for OPM life insurance premiums. Although appellant was without fault, she nonetheless bears responsibility for providing the financial information necessary to support the request for waiver. OWCP properly requested that she submit information regarding her income, assets and expenses by completing a questionnaire and providing supporting documentation. However, appellant did not provide any of the requested financial information or documentation. In the absence of the information requested, OWCP could not determine whether or not recovery

¹⁴ 5 U.S.C. § 8129(a).

¹⁵ *Id.*

¹⁶ *Id.* at § 8129(b).

¹⁷ *James Lloyd Otte*, 48 ECAB 334, 338 (1997); *see William J. Murphy*, 40 ECAB 569, 571 (1989).

¹⁸ 20 C.F.R. §§ 10.434 and 10.437.

¹⁹ *Id.* at § 10.438; *Linda Hilton*, 52 ECAB 476, 479 (2001).

of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, it properly denied waiver of recovery.²⁰

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provide that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent 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 When an individual fails to provide requested information on income, expenses and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.²²

ANALYSIS -- ISSUE 3

Appellant was in receipt of continuing compensation benefits and OWCP determined that repayment of the overpayment would be made by deducting \$300.00 from appellant's compensation every 28 days. The Board notes that she failed to provide information on her income, expenses and assets, and that OWCP followed collection guidelines by requiring installments large enough to collect the debt promptly. The Board will affirm OWCP's determination regarding rate of recovery.²³

CONCLUSION

The Board finds that OWCP properly found that an overpayment of \$2,558.99 was created. The Board finds that it properly denied waiver of recovery. The Board further finds that OWCP properly required repayment of the overpayment by deducting \$300.00 from appellant's compensation payments every 28 days.

²⁰ See *supra* note 17.

²¹ *Id.* at § 10.441.

²² *Gail M. Roe*, 47 ECAB 268, 276 (1995).

²³ See *J.H.*, Docket No. 09-1830 (issued September 13, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2013 is affirmed.

Issued: April 14, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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