

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

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D.K., Appellant )

and )

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

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**Docket No. 13-1707  
Issued: August 13, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 10, 2013 appellant filed a timely appeal from a June 27, 2013 overpayment decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant received a \$2,790.04 overpayment of compensation for the period February 26, 2011 to April 18, 2013; and (2) whether OWCP abused its discretion in denying waiver of the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

Appellant, then a 63-year-old sales associate, has an accepted occupational disease claim for bilateral carpal tunnel syndrome and a left trigger finger. She stopped work on February 8, 2010 and received compensation benefits for total disability.<sup>2</sup>

On February 16, 2010 appellant requested compensation for leave without pay beginning January 27, 2010. On the reverse side of the form, the employing establishment advised OWCP to make deductions for health benefits code 222, basic life insurance and optional life insurance code Y1. Using the health and life benefit codes, OWCP deducted the benefits from compensation payments commencing February 13 to 27, 2010. On April 11, 2010 appellant was placed on the periodic rolls.

By letter dated April 21, 2010, OWCP informed appellant of the weekly pay rate used to compute her gross compensation benefits and the deductions for her elected benefits of optional life insurance, basic life insurance and health insurance. For appellant's first payment from February 27 to April 10, 2010, basic life insurance would be deducted in the amount of \$9.00 and optional life insurance in the amount of \$176.36. Thereafter, her regular payments commencing April 11, 2010 would deduct basic life insurance in the amount of \$16.80 and optional life in the amount of \$329.20.

By letter dated February 1, 2011, OWCP informed appellant that deductions for optional life insurance would automatically stop when the recipient reached age 65 and coverage terminated shortly thereafter. Appellant had the option of continuing her Option B and Option C life insurance beyond age 65, also known as the "Post-65 reduction election." The letter noted that, if she wished to enroll in the program, an election form would be sent to her to sign, date and return to the Office of Personnel Management (OPM).

By letter dated April 17, 2013, OPM advised OWCP that appellant had elected postretirement basic life insurance with no reduction. It advised that her base salary was \$53,102.00 and that February 26, 2011 was the commencing date for making deductions for insurance premiums deducting for Code Y1 with basic life insurance Option B of 5 times salary, no deduction and Option C Family, 1 no reduction multiple.

On May 17, 2013 OWCP made a preliminary determination that appellant received an overpayment of \$2,790.04 for the period February 26, 2011 to April 18, 2013. On April 17, 2013 it was notified by OPM of appellant's election of postretirement basic insurance with no reduction as of February 26, 2011 and that OPM instructed that deductions for such coverage be made retroactive to that date. Due to OPM's failure to more timely notify OWCP, an overpayment was created in the amount of \$2,790.04 in premiums that should have been deducted. OWCP found that appellant was without fault in the creation of the overpayment. It requested that she submit financial information pursuant to an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days if she sought waiver of the overpayment. OWCP noted that waiver would be denied if appellant failed to furnish the information within 30

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<sup>2</sup> The Board notes that appellant returned to work in a limited-duty capacity on March 11, 2013, working four hours a day with restrictions. Appellant stopped work again on March 16, 2013 and returned on April 18, 2013.

days. It further informed her that she could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. Appellant did not respond.

By decision dated June 27, 2013, OWCP finalized the overpayment in the amount of \$2,790.04 from February 26, 2011 to April 18, 2013 as deductions were not made for postretirement basic life insurance. It found that appellant was without fault in the creation of the overpayment; but determined that the overpayment was not subject to waiver because she did not respond to the request to submit financial information. Thus, there was no evidence that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.

### **LEGAL PRECEDENT -- ISSUE 1**

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 or her duty.<sup>3</sup> 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.<sup>4</sup>

Section 8116(a) of FECA provides that while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.<sup>5</sup>

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 or more of the options.<sup>6</sup> The coverage for basic life is effective unless waived<sup>7</sup> and premiums for basic and optional life coverages are withheld from the employee's pay.<sup>8</sup>

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

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8116(a).

<sup>6</sup> 20 C.F.R. § 870.201.

<sup>7</sup> *Id.* at § 870.204(a).

<sup>8</sup> *Id.* at § 870.401(a).

certain circumstances<sup>9</sup> and may also retain the optional life insurance.<sup>10</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status.<sup>11</sup> If the compensationer chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationer was an employee will be used to withhold premiums from his or her compensation payments.<sup>12</sup> Thus while receiving disability compensation in lieu of retirement benefits; the former employee is responsible for all insurance premiums.<sup>13</sup> 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.<sup>14</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$2,790.04 for the period February 26, 2011 to April 18, 2013 based on the nondeduction on premiums for postretirement basic life insurance with no reduction.

By letter dated February 1, 2011, OWCP informed appellant that she had the option of continuing her life insurance coverage beyond age 65 through the "Post-65 reduction election." The letter noted that, if appellant wished to enroll in the program, an election form would be sent to her to sign, date and then return to OPM.

By letter dated April 17, 2013, OPM informed OWCP that appellant had elected postretirement basic life insurance coverage commencing on February 26, 2011. OPM noted that appellant's final base salary was \$53,102.00 and instructed OWCP to make deductions for Code Y1 for basic life Option B at 5 time salary, no reduction; and Option C Family, 1 no reduction multiple. The OPM documentation establishes appellant's election of postretirement coverage with the effective date of February 26, 2011.<sup>15</sup> As OWCP did not receive timely notice of appellant's election in 2011, it underwithheld insurance premiums in the amount of \$2,790.04 through April 18, 2013.

On appeal, appellant contends that she was not given an option to select whether she wanted postretirement basic life insurance. The record reflects that on February 1, 2011, prior to her 65<sup>th</sup> birthday, OWCP properly notified her of her opportunity to elect postretirement coverage. It provided appellant with information which she was to return, with her election, to OPM. The OPM documentation of record, in turn, reflects appellant's election of such benefits

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<sup>9</sup> *Id.* at § 870.701, subpart G.

<sup>10</sup> *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

<sup>11</sup> *Id.* at § 870.501.

<sup>12</sup> *Id.* at § 872.410, subpart D.

<sup>13</sup> *Scherri L. Stanley*, 53 ECAB 433 (2002).

<sup>14</sup> *See D.J.*, Docket No. 10-972 (issued January 11, 2011).

<sup>15</sup> *Id.*

effective February 26, 2011. Any concerns with regards to her election and continuing life insurance coverage are matters to pursue with OPM. As stated, once notified of an underwithholding of insurance coverage by OPM, OWCP is required to collect the full premium payment which then represents an overpayment of compensation. The Board will affirm the fact and amount of overpayment.

### **LEGAL PRECEDENT -- ISSUE 2**

The waiver or refusal to waive an overpayment of compensation is a matter that rests within the discretion of OWCP pursuant to statutory guidelines.<sup>16</sup> The statutory guidelines are found at section 8129(b) of FECA, which provides that adjustment or recovery of an overpayment by the United States may not be made when incorrect payment has been made to an individual who is without fault and then adjustment and recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup>

In turn, section 10.438 of the implementing federal regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP.<sup>18</sup> This information is needed to determine whether recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The regulations further provide that the 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.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

OWCP properly determined that appellant was without fault in the creation of the overpayment based on the underwithholding of insurance premiums for postretirement basic life with no reduction. The fact that appellant is without fault, however, does not mean that she is entitled to waiver of the overpayment. OWCP advised her of the overpayment in the preliminary determination notice sent to her on May 17, 2013. Appellant was provided the reasons for the overpayment and the opportunity to submit financial information with regard to waiver. She did not respond to the preliminary determination or submit any information relevant to waiver within 30 days. As noted, the implementing regulations provide that failure to submit the requested information within 30 days will result in the denial of waiver. Since appellant did not submit any financial questionnaire as requested, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>16</sup> See *E.C.*, Docket No. 14-826 (issued July 3, 2014).

<sup>17</sup> 5 U.S.C. § 8129(b).

<sup>18</sup> 20 C.F.R. § 10.438(a).

<sup>19</sup> *Id.* at § 10.438(b).

**CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$2,790.04 based on the underwithholding of postretirement life insurance premiums. Further OWCP did not abuse its discretion by denying waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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