



## **FACTUAL HISTORY**

On February 10, 2011 appellant, then a 63-year-old general expeditor, filed a traumatic injury claim alleging that on February 9, 2011 she broke her right leg when she was struck by a truck that was backing up. She stopped work. OWCP accepted the claim for right foot crushing injury and right open phalanx or phalanges and paid disability compensation. On June 6, 2011 appellant was placed on the periodic rolls.

In a letter dated June 5, 2012, the Office of Personnel Management (OPM) advised appellant that under current legislation an OWCP claimant who reached the age of 65 had the option of continuing his or her Option B and Option C life insurance beyond age 65.

Appellant began to receive retirement benefits effective January 2013.

On May 3, 2013 OWCP received an April 26, 2013 Election of Compensation Benefits form from OPM. Per OPM's form, appellant elected to continue Federal Employee's Group Life Insurance (FEGLI) basic and optional coverage (Code Z1). The final base salary on which FEGLI was based was \$54,257.00. Appellant's postretirement election was no reduction and the commencement date for the postretirement deductions was April 7, 2012. The record reveals that, since the effective date of appellant's election, April 7, 2012, OWCP had not withheld premiums for postretirement basic life insurance.

On November 17, 2013 OWCP adjusted her compensation payments to reflect the correct deductions for basic, optional and postretirement life insurance.

On December 31, 2013 OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$7,085.34 because OWCP had not withheld premiums for basic life insurance, optional life insurance and postretirement life insurance. It found that she was without fault in the creation of the overpayment and requested that she provide financial information in order to determine waiver of recovery of the overpayment. An overpayment worksheet demonstrated that deductions were made for basic life insurance in the amount of \$316.35 rather than the proper amount of \$326.12 for an overpayment of \$9.77 for basic life insurance. For optional life insurance, deductions of \$6,072.80 were withheld rather than the proper amount of \$10,905.30, which resulted in an overpayment of \$4,832.50. For postretirement basic life insurance, OWCP made no deductions from April 12, 2012 to November 16, 2013 when the total amount of \$2,243.07 should have been withheld. OWCP calculated the total amount of the overpayment to \$7,085.34. Appellant was advised that, if she failed to complete the Form OWCP-20 and submit financial documents in support of waiver, within 30 days, pursuant to 20 C.F.R. § 10.438 waiver would be denied. The Form OWCP-20 was not forthcoming.

Appellant submitted various medical reports dated September 10 to November 17, 2013 regarding her right foot injury.

By decision dated February 6, 2014, OWCP finalized its preliminary determination and found that appellant received a \$7,085.34 overpayment. It denied waiver of recovery of the overpayment because it received no financial documentation or a completed overpayment

recovery questionnaire. OWCP determined that it would deduct \$280.00 every 28 days from her continuing compensation benefits.

### **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.<sup>2</sup> 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.<sup>3</sup>

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>4</sup> The coverage for basic life insurance is effective unless waived<sup>5</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status. 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.<sup>7</sup> When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.<sup>8</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$7,085.34 because basic and optional life insurance deductions were improperly deducted from March 27, 2011 to November 16, 2013 and because postretirement insurance deductions were not made on her compensation payments from April 12, 2012 to November 16, 2013.

The record reflects that OWCP failed to deduct the proper premium amounts for appellant's basic and optional life insurance from compensation payments for the period March 27, 2011 to November 16, 2013. OWCP found that during this period, the amount of basic life insurance premium that was deducted was \$316.35 rather than the \$326.12 that should have been deducted. For optional life insurance, the amount of premiums that was deducted was

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Id.* at § 8129(a).

<sup>4</sup> *Id.* at § 8702(a).

<sup>5</sup> *Id.* at § 8702(b).

<sup>6</sup> *Id.* at § 8707.

<sup>7</sup> *Id.* at § 8706(b).

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

\$6,072.80 rather than the \$10,905.30 that should have been deducted. This resulted in an overpayment of \$4,842.27 for the period March 27, 2011 to November 16, 2013.

The record also reflects that appellant elected to receive post-retirement basic life insurance effective April 7, 2012. No deductions were made. OWCP found that during this period the amount of deductions for postretirement basic life insurance should have been \$2,243.07. Accordingly, the Board finds that appellant received an overpayment in compensation in the total amount of \$7,085.34.

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

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>9</sup> Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment.<sup>10</sup> 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 the implementing federal regulations.<sup>11</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>12</sup> Additionally recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when any individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>13</sup>

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

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<sup>9</sup> *Id.* at § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436 and 10.437.

<sup>10</sup> *James Lloyd Otte, supra* note 8; *see William J. Murphy*, 40 ECAB 569 (1989).

<sup>11</sup> 20 C.F.R. §§ 10.434 and 10.437.

<sup>12</sup> *Id.* at § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a)(1)(b) (June 2009).

<sup>13</sup> *Id.* at § 10.437(a)(b).

against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.<sup>14</sup>

When an overpayment has been made to an individual who is entitled to further payments and 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 factors so as to minimize any hardship.<sup>15</sup>

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

OWCP advised appellant by a December 31, 2013 notice of its preliminary determination of the \$7,085.34 overpayment and that she was not at fault in the creation of the overpayment. 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 of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, the Board finds that OWCP properly denied waiver of recovery.<sup>16</sup>

On appeal, appellant reiterates that she was not at fault in the creation of the overpayment and points out that she sent numerous letters to OWCP regarding her FEGLI deductions. As previously explained, the fact that she was without fault in the creation of the overpayment is insufficient to warrant waiver of recovery of the overpayment. Appellant must demonstrate that recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup> In this case, she failed to provide a Form OWCP-20 or any financial information or documentation to establish that recovery of her overpayment would defeat the purpose of FECA or be against equity and good conscience. Accordingly, appellant is not entitled to waiver of recovery.

### **CONCLUSION**

The Board finds that OWCP properly found that an overpayment of \$7,085.34 was created. The Board also finds that OWCP properly denied waiver of recovery.

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<sup>14</sup> *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>15</sup> *Id.* at § 10.441(a).

<sup>16</sup> *See C.A.*, Docket No. 14-86 (issued April 14, 2014).

<sup>17</sup> *Supra* notes 10 & 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 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