

FACTUAL HISTORY

On January 25, 2011 appellant, then a 44-year-old customer service supervisor, filed an occupational disease claim alleging that she sustained swelling, stiffness and pain in both knees as a result of the repetitive nature of her employment duties. She first became aware of her condition and realized it resulted from her employment on February 2, 2009. Appellant stopped work on January 25, 2011. OWCP accepted her claim for localized primary osteoarthritis of both knees. It paid disability compensation and placed appellant on the periodic rolls effective June 5, 2011.

By letter dated August 29, 2013, the Office of Personnel Management (OPM), Retirement Operations Center, informed OWCP that as a compensation appellant had elected to continue Federal Employees' Group Life Insurance (FEGLI) coverage with basic and optional life insurance. Appellant chose Standard Option A, Option B multiplied by 5 and Option C multiplied by 1 for family. The final base salary on which FEGLI was based was \$67,920.00. The postretirement election was no reduction. The commencement date for postretirement deductions was March 25, 2012. OPM attached a completed July 18, 2012 Continuation of Life Insurance Coverage form.

Effective October 20, 2013 OWCP adjusted appellant's compensation payments to reflect the correct deduction for postretirement life insurance pursuant to the August 29, 2013 OPM letter.

On January 27, 2014 OWCP issued a preliminary determination that appellant received an overpayment in compensation in the amount of \$3,000.22 because it did not make deductions for postretirement life insurance from March 25, 2012 to October 19, 2013. 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. OWCP also requested that appellant complete and submit an enclosed financial questionnaire (Form OWCP-20) within 30 days of the letter. An overpayment worksheet of record reflects that OWCP did not withhold deductions for postretirement life insurance from March 25, 2012 to October 19, 2013. It determined that OWCP should have withheld \$146.35 every 28 days from appellant's continuing compensation payments. OWCP multiplied \$146.35 by 20 periods of 28 days for a total of \$2,927.00. It divided \$146.35 by 28 days to determine a daily rate of \$5.23 and multiplied the daily rate of \$5.23 by 14 days for the additional period March 25 to April 7, 2012 for a total of \$73.22. OWCP found a total overpayment of \$3,000.22 for the period March 25, 2012 to October 19, 2013.

Appellant did not respond to the preliminary notice of overpayment.

By decision dated March 7, 2014, OWCP finalized the overpayment in the amount of \$3,000.22 for the period March 25, 2012 to October 19, 2013 for which appellant was without fault. 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 \$100.00 every 28 days from appellant's continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.² The coverage for basic life insurance is effective unless waived³ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁴

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 circumstances and may also retain the optional life insurance. 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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$3,000.22. The record reveals that she elected to receive postretirement basic and optional life insurance effective March 25, 2012 but OWCP did not make deductions until October 19, 2013. While in compensationner status, appellant remained responsible for all insurance benefits, including the premiums for postretirement life insurance. An overpayment worksheet demonstrated that the deductions for postretirement basic life insurance amounted to \$73.22 during the period March 25 to April 7, 2012 and to \$2,927.00 during the period April 8 to October 19, 2013 (20 periods of 28 days) for a total overpayment of \$3,000.22. The Board finds that appellant received a \$3,000.22 overpayment of compensation.⁷

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.⁸ Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to

² 5 U.S.C. § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

⁵ *Id.* at § 8706(b).

⁶ *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁷ See *C.A.*, Docket No. 14-86 (issued April 14, 2014).

⁸ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436 and 10.437.

waive the overpayment.⁹ 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.¹⁰

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.¹¹ 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.¹²

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. This information will also be used to determine the repayment schedule, if necessary.¹³

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.¹⁴

ANALYSIS -- ISSUE 2

OWCP advised appellant by notice dated January 27, 2014 of its preliminary determination of the \$3,000.22 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, she did not provide any of the

⁹ *James Lloyd Otte*, 48 ECAB 334 (1997); see *William J. Murphy*, 40 ECAB 569 (1989).

¹⁰ 20 C.F.R. §§ 10.434 and 10.437.

¹¹ *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).

¹² *Id.* at § 10.437(a)(b).

¹³ *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.* 55 ECAB 442 (2004).

¹⁴ *Id.* at § 10.441(a).

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. Under OWCP's implementing federal regulations at 20 C.F.R. § 10.438(b), the failure to submit the requested information within 30 days of the request shall result in the denial of waiver.¹⁵ Therefore, the Board finds that OWCP properly denied waiver of recovery.¹⁶

On appeal, appellant alleges that it is unfair that she has to pay back an error that occurred two years ago. As previously explained, however, an individual is subject to recovery of overpayment unless she can establish that such recovery would defeat the purpose of FECA or would be against equity and good conscience. The length of time it took OWCP to discover the overpayment error is immaterial to the issue of waiver. Appellant further contends that she is not financially able to pay back the \$3,000.22 overpayment. Despite her contention of financial hardship, she failed to provide any financial information or documents to support her request for waiver of recovery of the overpayment. Accordingly, appellant is not entitled to waiver of recovery.

CONCLUSION

The Board finds that OWCP properly found that an overpayment of \$3,000.22 was created. The Board also finds that OWCP properly denied waiver of recovery.

¹⁵ *Id.* at § 10.438(b).

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

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2014 overpayment decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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