

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

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K.S., Appellant	)	
	)	
and	)	<b>Docket No. 14-1646</b>
	)	<b>Issued: December 22, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Reynoldsburg, OH, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On July 21, 2014 appellant filed a timely appeal of the June 18, 2014 decision of the Office of Workers' Compensation Programs (OWCP) which found that appellant received an overpayment of compensation. 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 the case.

**ISSUES**

The issues are: (1) whether OWCP properly found an overpayment of \$487.37 was created from April 6, 2010 to February 9, 2013 due to a failure to deduct postretirement life insurance premiums and optional life insurance premiums; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP properly determined that the overpayment would be recovered by deducting \$100.00 from continuing compensation payments.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On November 25, 2008 appellant, then a 44-year-old letter carrier, sustained a low back injury while carrying his mailbag on November 25, 2008. OWCP accepted his claim for acute lumbar strain. Appellant stopped work on November 26, 2008 and did not return. He retired on April 9, 2010 and elected to receive FECA benefits from OWCP.

In a pay rate memorandum dated March 10, 2009, OWCP noted that appellant's base pay was \$47,685.00 per year and he elected basic life insurance and optional life insurance code "Z5." It began paying him compensation on January 12, 2009. Because of appellant's extended disability, on April 17, 2009, OWCP placed him on the periodic rolls where appellant would be paid every 28 days effective April 12, 2009.

In correspondence dated February 6, 2013, the Office of Personal Management (OPM) notified OWCP that appellant's final salary rate on which the Federal Employees' Group Life Insurance (FEGLI) was based was \$51,320.00. It advised that appellant was enrolled in postretirement basic life insurance at a 50 percent reduction effective April 6, 2010 and appellant's optional life insurance code was "J3."

In a periodic disability worksheet dated February 19, 2013, OWCP adjusted appellant's compensation payment effective February 10, 2013 and began deducting postretirement basic life insurance at a 50 percent reduction. It changed his optional life insurance code to "J3" and based the life insurance calculation on the annual salary of \$51,320.00.

In a February 20, 2013 letter, OWCP notified appellant that his periodic rolls payment would reflect deductions for postretirement basic life insurance at a 50 percent reduction, an optional life insurance code "J3" and the life insurance calculation would be based on the annual salary of \$51,320.00.

In a preliminary overpayment determination dated May 15, 2014, OWCP advised appellant that he received a \$487.37 overpayment of compensation because postretirement basic life insurance premiums were not deducted from his compensation, that optional life insurance premiums should have been deducted at code "J3," and that his final salary for FEGLI purposes was \$51,320.00 for the period April 6, 2010 to February 9, 2013. It advised that for the period April 6, 2010 to February 9, 2013, the amount of postretirement basic life insurance premiums that should have been deducted was \$1,737.47. Additionally, OWCP noted that optional life insurance was deducted at code "Z5" instead of "J3" and therefore appellant overpaid premiums by \$1,294.58. It further noted that the final salary used to calculate the basic life insurance was \$47,685.00 instead of the final salary for FEGLI of \$51,320.00 and therefore basic life insurance premiums of \$44.57 should have been deducted. OWCP noted that this resulted in an overpayment of compensation of \$487.37. It made a preliminary finding that appellant was without fault in creating the overpayment. OWCP informed him that, if he believed the overpayment should be waived, he should complete a financial recovery questionnaire form and submit documents such as income tax returns, bank statements, bills, canceled checks, pay slips and other records to support his claimed income and expenses. No additional information was provided by appellant.

In a June 18, 2014 decision, OWCP determined that appellant received a \$487.37 overpayment of compensation from April 6, 2010 to February 9, 2013 because postretirement basic life insurance premiums were not deducted from his compensation in the amount of \$1,737.47. Optional life insurance premiums should have been deducted at “J3” instead of “Z5.” Appellant, therefore, overpaid premiums by \$1,294.58, and the final salary for FEGLI purposes was \$51,320.00, not \$47,685.00, and therefore basic life insurance premiums of \$44.57 should have been deducted. It found that he was without fault in creating the overpayment, but that waiver of recovery was not warranted. OWCP noted that appellant did not respond to the preliminary overpayment determination and did not submit a financial recovery questionnaire form and supporting documents. As appellant failed to submit current income and expense information it determined that waiver of the overpayment could not be granted. OWCP directed that \$100.00 be withheld from his continuing compensation payments.

### **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 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.

Under the Federal Employees Group Life Insurance Program (FEGLI), most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>3</sup> The coverage for basic life insurance is effective unless waived<sup>4</sup> and the premiums for basic and optional life coverage are withheld from the employee’s pay.<sup>5</sup> While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee’s compensation.<sup>6</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made 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 of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>8</sup>

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<sup>2</sup> *Id.* at § 8102(a).

<sup>3</sup> 5 U.S.C. § 8702(a).

<sup>4</sup> *Id.* at § 8702(b).

<sup>5</sup> *Id.* at § 8707.

<sup>6</sup> *Id.* at § 8707(b)(1).

<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).

## **ANALYSIS -- ISSUE 1**

The record reflects that OWCP failed to deduct postretirement basic life insurance premiums from appellant's compensation benefits, that optional life insurance premiums should have been deducted at "J3" instead of "Z5," and that the final salary for FEGLI purposes was \$51,320.00, not \$47,685.00, for the period April 6, 2010 to February 9, 2013. It advised that for the period April 6, 2010 to February 9, 2013, the amount of postretirement basic life insurance premiums that should have been deducted was \$1,737.47. Additionally, OWCP noted that optional life insurance was deducted at code "Z5" instead of "J3" and therefore appellant overpaid optional life insurance premiums by \$1,294.58. It further noted that the final salary used to calculate the basic life insurance was \$47,685.00 instead of the final salary for FEGLI of \$51,320.00 and therefore basic life insurance premiums of \$44.57 should have been deducted. OWCP determined that this resulted in an overpayment of compensation of \$487.37. As no postretirement basic life insurance deductions were made, as optional life insurance premiums were deducted at "Z5" instead of "J3" and that the final salary for FEGLI purposes was \$51,320.00 and not \$47,685.00, the Board finds that an overpayment was created in the amount of \$487.37 due to the under withholding of postretirement basic life insurance and the over withholding of optional life insurance premiums. OWCP explained how the overpayment occurred and provided this to appellant with the preliminary notice of overpayment.<sup>9</sup>

Appellant does not dispute that he received the overpayment in question nor does he dispute the amount of the overpayment. Thus, it is found that the failure to deduct postretirement basic life insurance, using the incorrect code for the optional life insurance premiums and basing the life insurance on an incorrect final FEGLI salary caused an overpayment in compensation in the amount of \$487.37.

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

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>10</sup> These statutory guidelines are found in section 8129(b) of FECA which states: "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 when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."<sup>11</sup> When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

Section 10.436 of the implementing regulations<sup>12</sup> provide that recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks

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<sup>9</sup> See *Sandra K. Neil*, 40 ECAB 924 (1989).

<sup>10</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>11</sup> 5 U.S.C. § 8129(b).

<sup>12</sup> 20 C.F.R. § 10.436.

recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined [by OWCP] from data furnished by the Bureau of Labor Statistics.<sup>13</sup> An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>14</sup>

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>15</sup>

Section 10.438 of the 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 on 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 denial of waiver.<sup>16</sup>

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

OWCP determined that appellant was without fault in creating the overpayment. Because he is without fault in the matter of the overpayment, OWCP must adjust later payments only if adjustment would not defeat the purpose of FECA or be against equity and good conscience.

On May 15, 2014 OWCP requested that appellant provide necessary financial information by completing an overpayment recovery questionnaire, OWCP-20, if he desired waiver of the overpayment in question. Appellant did not submit a completed OWCP-20 overpayment questionnaire or otherwise submit financial information supporting his income and expenses. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>17</sup>

Consequently, as appellant did not submit the financial information required by section 10.438 of the OWCP's regulations,<sup>18</sup> which was necessary to determine eligibility for waiver,

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<sup>13</sup> An individual's assets must exceed a resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. This base includes all of the individual's assets not exempt from recoupment. *See Robert F. Kenney*, 42 ECAB 297 (1991).

<sup>14</sup> *See Sherry A. Hunt*, 49 ECAB 467, 473 (1998).

<sup>15</sup> 20 C.F.R. § 10.437.

<sup>16</sup> *Id.* at § 10.438.

<sup>17</sup> *See* 20 C.F.R. § 10.438 (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>18</sup> 20 C.F.R. § 10.438.

OWCP properly denied waiver of recovery of the overpayment.<sup>19</sup> Inasmuch as appellant has not shown that recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$487.37.

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>20</sup> Section 10.441(a) of the regulations<sup>21</sup> provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If 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>22</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under FECA. When, as in this case, an individual fails to provide requested information on income,<sup>23</sup> 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.<sup>24</sup> Appellant, as noted, did not provide any information for OWCP to consider in determining the amount to be withheld from his continuing compensation and the Board finds that OWCP did not abuse its discretion in determining that the overpayment sum of \$487.37 would be recovered by deducting \$100.00 from appellant's continuing compensation benefits every month.

On appeal appellant asserts that he was not at fault in the creation of the overpayment. He indicated that he was unable to submit the overpayment questionnaire within 30 days of the preliminary overpayment decision and requested additional time to submit the supporting documents. Appellant asserts that he has a severe financial hardship and was unable to repay the overpayment of compensation. The Board notes that on May 15, 2014, OWCP requested that appellant provide necessary financial information by completing an overpayment recovery

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<sup>19</sup> *D.C.*, Docket No. 09-1460 (issued April 19, 2010).

<sup>20</sup> *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>21</sup> 20 C.F.R. § 10.441(a).

<sup>22</sup> *Id.*

<sup>23</sup> See 20 C.F.R. § 10.438(a) (notes that the overpaid individual has the responsibility to provide financial information used to determine any repayment schedule).

<sup>24</sup> *Gail M. Roe*, 47 ECAB 268 (1995); *Robin D. Calhoun*, Docket No. 00-1756 (issued May 21, 2001).

questionnaire, OWCP-20, if he desired waiver of the overpayment in question. Appellant did not submit a completed OWCP-20 form or otherwise submit financial information supporting his income and expenses. As a result, OWCP did not have the necessary financial information to determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience and therefore properly denied waiver of the overpayment.<sup>25</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation during the period April 6, 2010 to February 9, 2013 in the amount of \$487.37 for under withholding of life insurance premiums, that he was not entitled to waiver of the overpayment, and required repayment from appellant's continuing monthly compensation payments.<sup>26</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>25</sup> See 20 C.F.R. § 10.438 (in requesting waiver, the overpaid individual has the responsibility for providing financial information).

<sup>26</sup> With his appeal appellant submitted financial information. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).