



due to moving large amounts of mail at work. Appellant stopped work and received compensation on the daily rolls for periods of disability. He later received compensation on the periodic rolls.

On June 5, 2003 OWCP granted appellant a schedule award for a six percent permanent impairment of his left leg. The award ran for 17.28 weeks from April 30 to August 28, 2003.

Appellant last worked for the employing establishment in April 2010. He began participating in an OWCP-sponsored vocational rehabilitation program in December 2010 but he did not return to work.

In a June 27, 2013 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 30, 2013 finding that he had no residuals of his April 10, 1999 work injury after that date. It based the termination on the March 15, 2013 report of Dr. Ivan Atosh, a Board-certified orthopedic surgeon serving as an OWCP referral physician, and on an April 8, 2013 report of Dr. Howard Cotler, an attending Board-certified orthopedic surgeon.

Appellant retired from the employing establishment in May 2013. While she was receiving compensation payments, OWCP failed to properly make Federal Employees' Group Life Insurance (FEGLI) deductions. OWCP was advised of this by the Office of Personnel Management (OPM) by letter dated May 31, 2013 for the period April 23, 2011 to June 1, 2013. It had failed to deduct \$3,169.74 from appellant's compensation for FEGLI for the period April 23, 2011 to June 1, 2013.

In a July 17, 2013 notice, OWCP advised appellant of its preliminary determination that he received a \$3,169.74 overpayment of compensation because it had failed to deduct the correct amount of FEGLI coverage during the period April 23, 2011 to June 1, 2013. It made a preliminary determination that he was not at fault in the creation of the overpayment. OWCP advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. It informed him that he could submit additional evidence in writing or at precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that appellant complete and return an enclosed financial information questionnaire within 30 days even if he was not requesting waiver of the overpayment. Appellant did not provide any response within the allotted time.

In a September 10, 2013 decision, OWCP determined that appellant received a \$3,169.74 overpayment of compensation. It found that appellant was not at fault in the creation of the overpayment, but that the overpayment was not subject to waiver because he did not submit any information to support waiver of recovery of the overpayment within the allotted time period.<sup>2</sup>

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<sup>2</sup> OWCP requested that appellant forward payment for the full amount of \$3,169.74 within 30 days. As recovery from continuing compensation benefits under FECA is not involved in this case, the Board has no jurisdiction over the method of OWCP's recovery of the overpayment. *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

### 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 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>

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>5</sup> The coverage for basic life insurance is effective unless waived<sup>6</sup> and the premiums for basic and optional life coverage are withheld from the employee’s pay.<sup>7</sup> While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee’s compensation.<sup>8</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>9</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>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$3,169.74 overpayment of compensation. In the present case, OWCP did not deduct the proper amount for zero percent postretirement reduction under FEGLI coverage during the period April 23, 2011 to June 1, 2013. The record contains a May 31, 2013 document from OPM showing that the commencement date of the failure to deduct FEGLI was April 23, 2011. Other documents, including a worksheet covering the period April 23, 2011 to June 1, 2013, show that OWCP failed to take out \$3,169.74 from appellant’s compensation for zero percent postretirement reduction covering the period April 23,

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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 § 8702(a).

<sup>6</sup> *Id.* at § 8702(b).

<sup>7</sup> *Id.* at § 8707.

<sup>8</sup> *Id.* at § 8707(b)(1).

<sup>9</sup> *Id.* at § 8706(b).

<sup>10</sup> *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2204); *James Lloyd Otte*, 48 ECAB 334 (1997).

2011 to June 1, 2013. Therefore, OWCP properly determined that appellant received a \$3,169.74 overpayment.

On appeal, appellant discussed his belief that he had been harassed by management with respect to his medical restrictions and his filing of Equal Employment Opportunity claims. However, he did not explain how these matters were relevant to the overpayment matter presently before the Board.

### **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>11</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>12</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 10.438 of OWCP's regulations provide:

"(a) 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.

"(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished."<sup>13</sup>

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

OWCP properly determined that appellant did not establish entitlement to waiver of recovery of the \$3,169.74 overpayment under the relevant standards. As noted above, failure to submit the requested information within 30 days to determine entitlement to waiver of recovery of a given overpayment shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.<sup>14</sup> Appellant did not provide the

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<sup>11</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>12</sup> 5 U.S.C. § 8129(b).

<sup>13</sup> 20 C.F.R. § 10.438.

<sup>14</sup> *Id.*

requested information within the appropriate time period to show that he was entitled to waiver of recovery of the overpayment and OWCP properly denied such waiver.<sup>15</sup>

**CONCLUSION**

The Board finds that OWCP properly found that appellant received a \$3,169.74 overpayment of compensation and that it properly denied waiver of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 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

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<sup>15</sup> Appellant did not complete and submit the financial questionnaire as requested by OWCP or submit any response within the allotted time.