

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

P.T., Appellant)
)
and)
)
U.S. POSTAL SERVICE, POST OFFICE,)
Cincinnati, OH, Employer)
_____)

Docket No. 14-1403
Issued: November 6, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2014 appellant filed a timely appeal from a December 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which finalized an overpayment of compensation. Pursuant to 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 an overpayment of compensation in the amount of \$2,404.38, because postretirement life insurance premiums were not deducted from her compensation payments from March 24, 2012 to October 19, 2013; and (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP properly determined to recover the overpayment at the rate of \$120.00 from her continuing compensation payments.

FACTUAL HISTORY

On August 10, 2011 OWCP accepted that appellant, then a 39-year-old mail processing clerk, had employment-related cervical spinal stenosis and degeneration of a cervical

intervertebral disc. On May 9 and August 3, 2012 it accepted cellulitis, other specified local infection of skin and subcutaneous tissues, streptococcus group A infection, exacerbation of thoracic degenerative disc disease, exacerbation of lumbar degenerative disc disease, cervicitis and endocervicitis. Appellant last worked for the employing establishment on January 29, 2011. She was placed on the periodic rolls and received wage-loss compensation benefits. Postretirement life insurance premiums were not deducted from her payments.

On July 2, 2013 the Office of Personnel Management (OPM) Retirement Operations Center, informed OWCP that as a compensationner, appellant was eligible to continue the Federal Employees' Group Life Insurance (FEGLI). The final base salary on which FEGLI was based was \$53,102.00. The postretirement election was no reduction and the commencement date for postretirement deductions was March 24, 2012. OWCP began making deductions as of October 20 to November 16, 2013 payment.

On October 22, 2013 OWCP issued a preliminary determination finding that appellant had been overpaid in the amount of \$2,404.38, because postretirement life insurance premiums were not paid from March 24, 2012 to October 19, 2013. It made a preliminary finding that appellant was without fault in creating an overpayment. OWCP calculated the overpayment, noting that appellant's postretirement life insurance premium was \$117.08 per pay period. For the period March 24, 2012 to October 19, 2013, appellant received \$74,921.06 as she did not have the postretirement life insurance premiums deducted. OWCP calculated that she should have been paid \$72,517.36, after the postretirement life insurance premiums were deducted. It subtracted \$72,517.36 from the amount she received \$74,921.06 to determine that she received an overpayment in the amount of \$2,404.38. OWCP informed appellant of her right to challenge the fact or amount of the overpayment or request a waiver of the overpayment. If appellant wished a waiver of the overpayment, she was directed to submit financial information by completing an overpayment recovery questionnaire. She was afforded 30 days to respond. The record reflects that appellant did not respond.

By decision dated December 6, 2013, OWCP finalized that appellant received an overpayment of compensation in the amount of \$2,404.38, for which she was not at fault. Appellant was not entitled to waiver of recovery of the overpayment. It directed recovery from her continuing compensation payments at the rate of \$120.00 per month.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance Program (FEGLI),¹ most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options. The coverage for basic life insurance is effective unless waived and the premiums for basic and optional life coverage are withheld from the employee's pay. At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationner" status. If the compensationner 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. When an underwithholding of life insurance

¹ The law governing life insurance for federal employees is found at 5 U.S.C. §§ 8701-8716.

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.²

ANALYSIS -- ISSUE 1

OWCP found that appellant received a \$2,404.38 overpayment of compensation because postretirement insurance premiums were not deducted from her compensation payments from March 24, 2012 to October 19, 2013.

The record reflects that OPM informed OWCP that the commencement date for the postretirement deductions was March 24, 2012. The record reflects that no deductions for postretirement life insurance were made until October 20, 2013. OWCP determined that, during this period, the amount of deductions for the postretirement basic life insurance should have been \$2,404.38. The record contains OWCP payment records and worksheets documenting this calculation. Appellant did not respond to the preliminary notice or contest the fact or amount of the overpayment. The Board finds that she received an overpayment in the amount of \$2,404.38.

LEGAL PRECEDENT -- ISSUE 2 & 3

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.³ Thus, a finding that appellant was without fault is not sufficient, in and of itself, for OWCP to waive the overpayment.⁴ 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.⁵

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.⁶ Additionally

² *Id.* at § 8707(d); *Keith H. Mapes*, 56 ECAB 130 (2004). An underwithholding of premiums results in a two-tiered liability: The claimant owes the agency the underwithheld funds, and similarly the agency owes the insurance fund/OPM. If this occurs, OWCP must make OPM whole and remit the entire amount of the underwithholding, even if the debt is eventually waived. Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.11.b(2) (August 2004).

³ *Id.* at § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436 and 10.437.

⁴ *James Lloyd Otte*, 48 ECAB 334 (1997); *see William J. Murphy*, 40 ECAB 569 (1989).

⁵ 20 C.F.R. §§ 10.434 and 10.437.

⁶ *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).

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.⁷

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.⁸

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.⁹

ANALYSIS -- ISSUE 2 & 3

OWCP advised appellant on October 22, 2013 of its preliminary determination of the \$2,404.38 overpayment and that she was found 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 respond to the request for 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 in conformance with its implementing regulations at 20 C.F.R. § 10.438(b).¹⁰

The Board also finds that OWCP properly determined to recover the overpayment at the rate of \$120.00 from her continuing compensation payments. Appellant did not provide any financial information or documentation, as requested. The Board finds that in directing recovery of the overpayment from her continuing compensation, OWCP followed its regulations at 20 C.F.R. § 10.441(a).

On appeal, appellant argued that, if she was aware the premiums were so high, she would have canceled the insurance until her return to work. She stated that the overpayment would

⁷ *Id.* at § 10.437(a)(b).

⁸ *Id.* at § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

⁹ *Id.* at § 10.441(a).

¹⁰ *See C.A.*, Docket No. 14-86 (issued April 14, 2014).

cause her undue hardship. As noted, 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.¹¹ 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 appellant received an overpayment of compensation in the amount \$2,404.3, because postretirement life insurance premiums were not deducted from her compensation payments from March 24, 2012 to October 19, 2013. The Board also finds that OWCP properly denied waiver of the overpayment and properly determined to recover the overpayment at the rate of \$120.00 from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹¹ See *James Lloyd Otte*, *supra* note 4; see *William J. Murphy*, 40 ECAB 569 (1989); 20 C.F.R. §§ 10.434 and 10.437.