



## **FACTUAL HISTORY**

On March 16, 2013 appellant, then a 34-year-old city letter carrier, injured his low back, right knee, right shoulder and right elbow. He returned to work on March 16, 2013 and began to case the mail for his route which increased the pain to his low back, right shoulder and right knee. Appellant also developed pain in his right elbow. On May 30, 2013 OWCP accepted his claim for aggravation of a right knee lateral meniscus tear, aggravation of internal derangement of the right shoulder, aggravation of right shoulder impingement, aggravation of right elbow internal derangement and aggravation of lumbar disc syndrome with radiculopathy.<sup>2</sup>

Appellant received continuation of pay from March 17 through April 30, 2013. He filed a claim for wage-loss compensation commencing May 2 through June 14, 2013. OWCP authorized compensation benefits in the amount of \$3,454.28 for the period May 1 through June 1, 2013. It authorized compensation in the amount of \$3,022.50 for the period June 2 through June 29, 2013. On June 21, 2013 OWCP entered appellant on the periodic rolls. It advised that his weekly pay rate was \$1,013.00, that he was entitled to compensation at the augmented rate of 75 percent and that cost-of-living adjustments increased his gross weekly compensation to \$769.75. OWCP stated that appellant's initial payment from May 1 through June 1, 2013 was \$3,473.14 with a deduction of \$18.86 for basic life insurance with a net amount of \$3,454.28. Appellant's regular payment was calculated to be \$3,039.00 less basic life insurance of \$16.50 for a net amount of \$3,022.50. OWCP advised him, "If you have optional life insurance and/or health benefits coverage, but no deduction for it is shown above, contact this office immediately. You are still responsible for these premiums." Appellant completed a direct deposit sign-up form for his bank on June 7, 2013. He completed a second form on September 23, 2013 for his credit union.

In a letter dated November 19, 2013, the Office of Personnel Management (OPM) stated that as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) at the final base salary of \$52,292.00 at the basic rate. The postretirement election was 75 percent reduction and the commencing date for the postretirement deductions was April 21, 2012. Basic and optional coverage premiums began on OWCP's commencing date.

On November 26, 2013 OWCP determined that appellant should have received compensation from November 17 through December 14, 2013 at the weekly pay rate of \$1,013.00 with a gross amount of \$3,039.00 effective September 25, 2013. The net amount of compensation was \$2,822.83 with no deductions for health or life insurance.

On January 23, 2014 appellant requested that his health insurance be deducted from his periodic rolls as his policy had been cancelled due to nonpayment and his medical bills were denied. Beginning on January 12, 2014, OWCP deducted \$188.44 for health insurance and \$16.50 for basic life insurance as well as \$89.80 for miscellaneous deductions from appellant's gross compensation of \$2,822.83, resulting in net compensation of \$2,528.09.

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<sup>2</sup> In a decision dated February 6, 2013, OWCP terminated appellant's medical and compensation benefits effective February 6, 2013 under claim file number xxxxxx193.

In a telephone memorandum dated January 28, 2014, OWCP noted that appellant's health benefits were deducted under claim file number xxxxxx193, which was terminated effective February 6, 2013. It determined that it needed to compute arrears for health benefits from May 1, 2013 to January 11, 2014, as basic life insurance had been deducted from May 1, 2013.

OWCP determined the amount not deducted for health benefits from May 1, 2013 through January 11, 2014 totaled \$1,669.30. It also calculated the amount not paid for life insurance benefits from November 17, 2013 through January 11, 2014 of \$33.00. OWCP determined that appellant received an overpayment of compensation in the amount of \$1,702.30 due to underpayment of health benefits.

In a preliminary determination dated February 18, 2014, OWCP informed appellant that he had received an overpayment in the amount of \$1,702.30 because health benefits premiums in the amount of \$1,669.30 were not deducted from his compensation payments from May 1, 2013 through January 11, 2014 and basic life insurance premiums in the amount of \$33.00 were not deducted from November 17, 2013 through January 11, 2014. It found that he was not at fault in the creation of the overpayment and provided him with his appeal rights as well as an overpayment recovery questionnaire. OWCP noted that in order for it to consider the question of waiver or to determine a reasonable method for collection he must complete and submit the overpayment recovery questionnaire with supporting financial documents within 30 days. It noted that under 20 C.F.R. § 10.438 the failure to submit the requested information within 30 days would result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished.

By decision dated March 24, 2014, OWCP determined that appellant received an overpayment in the amount of \$1,702.30 for the period May 1, 2013 through January 11, 2014 for which he was not at fault. It found that he did not respond to the preliminary decision. OWCP determined to deduct the amount of \$282.28 from appellant's ongoing compensation and noted that this amount represented 10 percent of his current gross periodic compensation payments.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA<sup>3</sup> 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 duty.<sup>4</sup> Section 8129(a) of FECA provides, in pertinent part, that 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>5</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Id.* at § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

The regulations of OPM, which administers the Federal Employees' Health Benefit program, provide guidelines for registration, enrollment and continuation of enrollment of federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“[A]n employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefit withholdings or direct premium payments are not made but during which the enrollment continues.<sup>6</sup>”

In addition, 5 C.F.R. § 890.502(c) provides:

“An agency that withholds less than the proper health benefits contributions from an individual's pay, annuity or compensation must submit an amount equal to the sum of the uncollected contributions and applicable agency contributions required under section 8906 of Title 5 United States Code, to OPM for deposit in the Employees' Health Benefits Fund.<sup>7</sup>”

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.<sup>8</sup> An agency that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>9</sup> The Board has recognized that, when an underwithholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.<sup>10</sup>

Under the FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>11</sup> The coverage for basic life insurance is effective unless waived<sup>12</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>13</sup> When an underwithholding 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>14</sup>

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<sup>6</sup> 5 C.F.R. § 890.502(a)(1).

<sup>7</sup> *Id.* at § 890.502(c).

<sup>8</sup> *Id.* at § 890.502(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> *T.S.*, Docket No. 08-1604 (issued March 13, 2009); 5 C.F.R. § 890.502.

<sup>11</sup> 5 U.S.C. § 8702(a).

<sup>12</sup> *Id.* at § 8702(b).

<sup>13</sup> *Id.* at § 8707.

<sup>14</sup> *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

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

OWCP accepted that appellant sustained aggravation of preexisting conditions and authorized compensation beginning May 1, 2013. It did not make any deductions for his health insurance benefits until January 11, 2014. As noted above appellant is responsible for the resulting overpayment as OWCP must reimburse OPM for his health insurance benefits. OWCP also failed to make deductions for appellant's FEGLI beginning on November 17, 2013 through January 11, 2014.

The Board finds that appellant received an overpayment of compensation in the amount of \$1,702.30. OWCP did not deduct \$1,669.30 for health insurance premiums or \$33.00 in life insurance premiums for the periods as noted. There is no evidence that appellant cancelled his health benefits enrollment or basic life insurance. OWCP explained how the overpayment occurred and provided this to him with the preliminary notice of overpayment. Appellant did not dispute that he received the overpayment or the amount of the overpayment. Thus, the failure to deduct health and basic life insurance premiums caused an overpayment of compensation in the total amount of \$1,702.30.<sup>15</sup>

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

Section 8129(a) of FECA provides that when an overpayment of compensation occurs "because of an error of fact or law," adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.<sup>16</sup> The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b):

"Adjustment or recovery 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 FECA or would be against equity and good conscience."

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

Section 10.436 of the implementing regulations<sup>17</sup> provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses and outlines the specific financial circumstances under which recovery may be considered to defeat the purpose of FECA.

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<sup>15</sup> *E.G.*, Docket No. 13-989 (issued December 11, 2013).

<sup>16</sup> 5 U.S.C. § 8129(a).

<sup>17</sup> 20 C.F.R. § 10.436.

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>18</sup>

Section 10.438(a) provides that the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP, as 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.<sup>19</sup> This information would also be used to determine the repayment schedule, if necessary. Section 10.438(b) provides that failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>20</sup>

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

The Board finds that OWCP properly determined that appellant did not establish entitlement to waiver of recovery of the \$1,702.30 overpayment under the above-described standards. Appellant did not provide a completed overpayment recovery questionnaire or any financial information to show that he was entitled to waiver of the overpayment within 30 days of the preliminary overpayment determination. Despite being advised by OWCP's February 18, 2014 letter regarding the importance of providing financial information on an overpayment recovery questionnaire form, he failed to provide such information or a completed form before OWCP's March 24, 2014 decision. For these reasons, OWCP properly determined that appellant did not show that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, it properly denied waiver of recovery of the overpayment.<sup>21</sup>

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

Section 10.321(a)<sup>22</sup> provides that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, "having due regard to 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 resulting hardship upon such individual." When, as in this case, an individual fails to provide requested information on income, expenses and assets, OWCP should follow minimum collection guidelines, which state in general that government claims

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<sup>18</sup> *Id.* at § 10.437.

<sup>19</sup> *Id.* at § 10.438(a).

<sup>20</sup> *Id.* at § 10.438(b).

<sup>21</sup> *S.H.*, Docket No. 14-421 (issued August 27, 2014).

<sup>22</sup> 20 C.F.R. § 10.321(a).

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>23</sup>

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

The Board finds that OWCP did not abuse its discretion in following the guidelines in this case. OWCP determined that the overpayment should be recovered from appellant's continuing compensation payments at the rate of \$282.28 and noted that this amount represented 10 percent of his current gross periodic compensation payments. In the absence of the financial information provided by the overpayment recovery questionnaire, it was left to consider the extent of his future compensation payments, the rate of his compensation and minimum collection guidelines. OWCP gave due regard to the relevant factors. The Board finds that it properly determined that recovery should be made in the amount of \$282.28 from appellant's continuing compensation benefits.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of for \$1,702.30 for the period May 1, 2013 through January 11, 2014, for which he was not at fault and that OWCP properly denied waiver of recovery of the overpayment and properly determined the rate of recovery of the overpayment from continuing compensation payments.

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<sup>23</sup> See *Gail M. Roe*, 47 ECAB 268 (1995) (when an individual failed to provide the requested information on income, expenses and assets, the Board found that OWCP did not abuse its discretion in following 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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