

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

C.P., Appellant)	
)	
and)	Docket No. 14-975
)	Issued: September 11, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Tampa, FL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 25, 2014 appellant filed a timely appeal from a March 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding an overpayment of compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUES

The issues are: (1) whether appellant received a \$544.64 overpayment of compensation for the period September 21, 2013 through February 8, 2014; (2) whether the overpayment is subject to waiver of recovery; and (3) whether OWCP properly withheld \$50.00 from appellant's continuing compensation payments beginning March 9, 2014.

FACTUAL HISTORY

On February 25, 2011 appellant, then a 53-year-old letter carrier, sustained injury, when her right knee popped while in the performance of her regular duties. OWCP accepted a right

¹ 5 U.S.C. § 8101 *et seq.*

knee strain and right medial meniscus tear. It paid wage-loss benefits and for a December 13, 2011 right knee arthroscopy. Appellant eventually retired.

In a letter dated January 21, 2014, the Office of Personnel Management (OPM) advised OWCP that appellant had elected Federal Employees' Group Life Insurance (FEGLI) and that there had been no reduction for postretirement life insurance election, which commenced September 21, 2013. Deduction was to be made using code WO, effective September 21, 2013, for basic life insurance and optional life insurance, option B, at five times salary full reduction.

In a February 6, 2014 manual adjustment form, OWCP calculated the life insurance deductions for the period of September 21, 2013 to February 8, 2014: the gross sum of \$14,592.69 was reduced by \$89.13 for basic life insurance, \$736.73 for optional life insurance and \$0 for postretirement basic life insurance, which netted a payment of \$13,766.84. It found that the gross entitlement for the same period, \$14,592.69, should have been reduced by \$89.13 for basic life insurance, \$660.18 for optional life insurance and \$621.18 for postretirement basic life insurance, which equaled net entitlement amount of \$13,222.20. OWCP found that net payment of \$13,766.84 minus net entitlement of \$13,222.20 resulted in total overpayment of \$544.64.

OWCP informed appellant in a preliminary determination dated February 6, 2014 that she had received an overpayment of compensation in the amount of \$544.64 because optional life insurance and postretirement basic life insurance were not properly deducted from her compensation payments for the period September 21, 2013 to February 8, 2014. It provided a calculation of the overpayment, noting that optional life insurance was deducted in the amount of \$736.73 but should only have been deducted \$660.18 and that OWCP had failed to make any deduction for postretirement benefit life insurance when it should have deducted \$621.18. The credit of \$76.54 from the over deduction of optional life insurance, subtracted from the under deduction of postretirement life insurance in the amount of \$621.18 resulted in an overpayment of \$544.64. It found that appellant was not at fault in the creation of the overpayment and requested that she provide financial information within 30 days or if she contested that an overpayment occurred.

Appellant requested that OWCP make a decision based on the written evidence. She completed an overpayment recovery questionnaire with supporting documentation on February 24, 2014 listing monthly income of \$2,585.54 and total monthly expenses of \$2,650.98. This was comprised of mortgage, \$1,066.00; car payment \$352.73; car insurance \$103.25; food \$500.00; clothing \$100.00; utilities \$200.00 for electricity; \$60.00 for water; \$60.00 for telephone; \$139.00 for cable; and \$270.00 as minimum payments on five credit cards. Total assets of \$83,341.31 were also listed, which included \$20.00 cash; \$600.00 checking; \$1,400.00 savings; \$14,521.00 in Edward Jones investment; and \$66,800.00 thrift saving plan (TSP).

By decision dated March 11, 2014, OWCP finalized that appellant had received an overpayment of compensation in the amount of \$544.64 for the period September 21, 2013 through February 8, 2014 as optional life insurance was over deducted but no postretirement basic life insurance was deducted from her compensation payments. It found that she was not at fault in the creation of the overpayment but that the overpayment was not subject to waiver as her assets exceeded the statutory amount of \$4,800.00. OWCP directed recovery by deducting \$50.00 every 28 days from her continuing compensation benefits.

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 or her duty.² 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.³

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁴ The coverage for basic life insurance is effective unless waived⁵ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The record reflects that OPM notified OWCP of incorrect withholding of two FEGLI options for the period September 21, 2013 to February 8, 2014. OWCP calculated the amount of the resulting overpayment to be \$544.64. On January 21, 2004 OPM informed OWCP that appellant elected postretirement basic life insurance coverage. Appellant's final base salary was \$56,508.00 and OPM instructed OWCP to make deductions for code WO for basic life under opinion B at 5 times salary, full reduction as OWCP did not receive timely notice of her election in 2013 it under withheld insurance primaries in the amount of \$544.64. The Board finds that OWCP properly determined the fact and the amount of overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that when an overpayment of compensation occurs because of an error of fact of law, adjustment or recovery shall be made by decreasing later payment to which the individual is entitled.⁸ 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.

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁸ *Id.* at § 8129(a).

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 regulations⁹ provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) 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 (b) the beneficiary's assets do not exceed the resource base of \$4,800.00 for an individual.¹⁰ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses plus \$50.00).¹¹

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹² Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss.¹³

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.¹⁴

ANALYSIS -- ISSUE 2

OWCP found that appellant was not at fault in creating the overpayment of compensation and considered whether she was entitled to waiver of recovery. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary

⁹ 20 C.F.R. § 10.436.

¹⁰ *Id.* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (October 2004).

¹¹ *Id.*

¹² *Id.* at § 10.437(b).

¹³ Federal (FECA) Procedure Manual, *see supra* note 10, Chapter 6.200.6.b(3) (October 2004).

¹⁴ 20 C.F.R. § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.¹⁵

OWCP determined that appellant's financial assets exceeded the allowed resource base. Appellant provided an overpayment recovery questionnaire listing assets of \$83,341.31. OWCP's procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent.¹⁶ Appellant has no qualifying dependent and thus her qualifying amount for waiver is \$4,800.00.¹⁷ As her assets of \$83,341.31¹⁸ exceed the amount specified, she has not established that recovery would defeat the purpose of FECA.¹⁹

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no argument that she relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of recovery of the overpayment.

On appeal, appellant contends that she was not at fault in creating the overpayment. The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering all or part of the overpayment.²⁰

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. Section 10.441(a) of the regulations 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.²¹

¹⁵ *Id.* at § 10.436.

¹⁶ *See* 5 U.S.C. § 8116(a); 20 C.F.R. § 10.500.

¹⁷ *See J.F.*, Docket No. 10-1185 (issued February 1, 2011).

¹⁸ *See R.A.*, Docket No. 13-1121 (issued October 29, 2013). TSP savings can be included in the asset base.

¹⁹ It is unclear whether the hearing representative took into account a fifth credit card and cable in appellant's monthly expenses, which would make her monthly expenses a few hundred over her reported monthly income. However, as appellant has the financial assets to resolve the debt and she has not shown that repayment of the overpayment would defeat the purpose of FECA, an analysis into the whether appellant substantially requires all of her income to meet current ordinary and necessary living expenses is not necessary.

²⁰ *See George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

²¹ *Id.* at § 10.441.

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation benefits by \$50.00 per month taking into account the amount of the compensation and the financial circumstances of appellant to minimize hardship, as well as the factors set forth in section 10.441. It found that this method of recovery would minimize any resulting hardship on her. The Board finds that OWCP properly required repayment of the overpayment by deducting \$50.00 from appellant's ongoing compensation payments every four weeks.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$544.64 for the period September 21, 2013 through February 8, 2014 for which she was not at fault. Appellant is not entitled to waiver of recovery of the overpayment and it should be recovered by withholding \$50.00 per month from her continuing compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2014
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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