

compensation; and (3) whether OWCP properly required repayment of the overpayment by deducting \$183.95 every 28 days from her continuing compensation benefits.

On appeal, appellant contends that she was not at fault in creating the overpayment.

FACTUAL HISTORY

OWCP accepted that appellant, then a 46-year-old criminal investigator, sustained a right stress fracture of her tibia or fibula and right lateral epicondylitis during a training exercise in the performance of duty. Appellant was placed on the periodic rolls and received appropriate compensation benefits.

In a letter dated March 6, 2014, the Office of Personnel Management (OPM) advised OWCP that appellant had elected Federal Employees' Group Life Insurance (FEGLI) for basic life insurance and optional life insurance, option B.

In an April 8, 2014 manual adjustment form, OWCP calculated the optional life insurance premiums for the period October 9, 2011 through March 8, 2014, which resulted in an overpayment of \$1,839.54.

OWCP informed appellant in a preliminary determination dated April 14, 2014 that she had received an overpayment of compensation in the amount of \$1,839.54 because optional life insurance premiums were not properly deducted from her compensation payments for the period October 9, 2011 through March 8, 2014. It found that she was not at fault in the creation of the overpayment. OWCP advised appellant of her right to request a telephone conference, a final decision based on the written evidence, or a precoupment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. Appellant was advised to complete an overpayment recovery questionnaire and submit supporting financial documents.

On May 5, 2014 appellant requested a telephone conference. She completed an overpayment recovery questionnaire indicating that she had no monthly income and total monthly expenses of \$7,800.00. Appellant listed other funds totaling \$100.00. She requested waiver of recovery of the overpayment.

On July 14, 2014 OWCP conducted a telephone conference with appellant regarding her overpayment of compensation.

By decision dated July 16, 2014, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$1,839.54 because optional life insurance premiums were not properly deducted from her compensation payments for the period October 9, 2011 through March 8, 2014. It found that she was not at fault in the creation of the overpayment, but that she was not entitled to waiver of recovery as she had failed to provide any supporting financial documentation, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting the income and expenses listed on her overpayment recovery questionnaire. OWCP noted that, although appellant indicated on the overpayment recovery questionnaire that she had no monthly income, she was in fact in receipt of \$6,987.66 every 28 days. It directed recovery by deducting \$183.95 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.³ 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.⁴

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The record reflects that OPM notified OWCP of an underwithholding of optional life insurance premiums for the period October 9, 2011 through March 8, 2014. OWCP calculated the amount of the underwithholding and resulting overpayment to be \$1,839.54. It further found that appellant was not at fault in the creation of the resulting overpayment. The Board finds that appellant received an overpayment of compensation in the amount of \$1,839.54 for the period October 9, 2011 through March 8, 2014, for which she was not at fault.

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.⁹ 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.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ 5 U.S.C. § 8707(d). *See Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁹ *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 regulations¹⁰ 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.¹¹ 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).¹²

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 or her position for the worse.¹³ 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.¹⁴

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.¹⁵

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,

¹⁰ 20 C.F.R. § 10.436.

¹¹ *Id.* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (June 2009).

¹² *Id.*

¹³ 20 C.F.R. § 10.437(b).

¹⁴ Federal (FECA) Procedure Manual, *see supra* note 11 at Chapter 6.200.6.b(3) (June 2009).

¹⁵ 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 procedures.¹⁶

Appellant provided an overpayment recovery questionnaire indicating that she had no monthly income and listed other funds totaling \$100.00, but the record reveals that she receives of compensation in the amount of \$6,987.66 every 28 days. She listed total monthly expenses of \$7,800.00. However, appellant did not provide any supporting documentation. The evidence of record does not demonstrate that repayment of the overpayment would be against equity and good conscience. Moreover, appellant submitted no evidence or argument that she relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt. Thus, the Board finds that appellant is not entitled to waiver of recovery of the overpayment of compensation as she has not established that recovery would either be against equity and good conscience or defeat the purpose of FECA.

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.¹⁷ Therefore, the Board finds that appellant's argument is not substantiated.

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 OWCP's regulations provide that 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.¹⁸ 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.¹⁹

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation benefits by \$183.95 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 of OWCP's regulations. 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 of compensation by deducting \$183.95 every 28 days from her continuing compensation benefits.

¹⁶ *Id.* at § 10.436.

¹⁷ See *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

¹⁸ 20 C.F.R. § 10.441.

¹⁹ *Id.*

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,839.54 for the period October 9, 2011 through March 8, 2014, for which she was not at fault. The Board further finds that appellant is not entitled to waiver of recovery of the overpayment of compensation and that OWCP properly required repayment of the overpayment by deducting \$183.95 every 28 days from her continuing compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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