

denied waiver of the recovery of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$150.00 from each of appellant's continuing compensation payments.

On appeal, appellant contends that he is suffering from financial hardship and has filed for Chapter 13 bankruptcy protection.

FACTUAL HISTORY

On April 28, 2003 appellant, then a 45-year-old correctional officer, filed a traumatic injury claim alleging that on April 27, 2003, while conducting a routine shakedown of Unit 2, he bent down to look under the sinks and that, when he straightened, he felt a twist and sharp pain in his lower back and some pain in his legs. On June 18, 2003 OWCP accepted his claim for sciatica and radiculitis. Subsequently, it also accepted appellant's claim for degeneration of the lumbar or lumbosacral spine and displacement of the lumbar intervertebral disc. Appellant was placed on the periodic rolls.

On February 11, 2009 appellant completed a form entitled "Continuation of Life Insurance Coverage As an Annuitant or Compensationeer." He opted for continuation of basic life insurance coverage at the "no reduction" level. Appellant also claimed Option A standard optional insurance, Option B insurance at five multiples at the no reduction level, and Option C, family optional insurance with one multiple at the no reduction level.

In a letter dated September 23, 2013, the Office of Personnel Management (OPM) informed OWCP that, effective October 1, 2013, appellant cancelled Option B insurance and that any excess premiums should be returned to appellant.

By letter dated June 2, 2014, appellant also requested that postretirement life insurance coverage be cancelled effective the next pay period.

By preliminary determination dated July 30, 2014, OWCP noted that appellant had originally opted for postreduction life insurance at the no reduction level but it had not been deducted from his compensation payment for the period February 15, 2009 through May 3, 2014. It also acknowledged that appellant had cancelled his Option B insurance effective October 1, 2013. OWCP calculated that appellant's refund due to the cancellation of Option B insurance was \$971.38.³ It determined that the failure to deduct proper insurance premiums from February 15, 2009 to May 3, 2014 was \$6,912.54. OWCP found appellant without fault in the creation of the overpayment. It provided him with information with regard to the various actions he could pursue to contest the finding, as well as forms to be completed with regard to waiver and collecting the overpayment. Appellant did not complete these forms or respond to the preliminary determination within the 30 days allotted.

³ OWCP found that for the 19 days from October 1 through 29, 2013 appellant was due a refund of \$85.88 and for the period October 30, 2013 through May 3, 2014, a period of seven 28-day pay periods, appellant was due \$126.50 for a total of \$885.50, for a total refund of \$971.38.

By decision dated September 18, 2014, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$6,912.54. It found that appellant was not entitled to waiver of recovery of the overpayment, and determined that \$150.00 will be deducted from future compensation payments until the overpayment is paid.

LEGAL PRECEDENT

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 duty.⁴ 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.

Under the Federal Employees Group Life Insurance Program (FEGLI), most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more options.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life insurance are withheld from the employee's pay.⁷ While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee's compensation.⁸ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status. If the compensation choser 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.⁹ When an under withholding 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.¹⁰

ANALYSIS

The Board finds that, although fact of overpayment has been established, the case is not in posture for decision regarding the amount of the overpayment of compensation.

On February 11, 2009 appellant opted for continuation of life insurance coverage, and opted for basic life insurance at the no reduction level, standard option insurance, Option B optional insurance at five multiples at the no reduction level, and Option C optional insurance at one multiple. By letter dated June 2, 2014, he requested that postretirement coverage be

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at 8707(b)(1).

⁹ *Id.* at § 8706(b).

¹⁰ *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

cancelled effective the next pay period. While in compensation status, appellant remained responsible for all insurance premiums benefits at whatever option appellant had selected.¹¹ An overpayment occurred as OWCP failed to properly deduct life insurance premiums from February 15, 2009 through May 3, 2014. Accordingly, the Board finds that OWCP properly determined that appellant received an overpayment of compensation.

However, the Board finds that OWCP did not establish the amount of overpayment. OWCP did not provide a clearly written explanation indicating how the overpayment was calculated. The July 30, 2014 letter explained that appellant was entitled to a refund of \$971.38 that was due to appellant for the period October 1, 2013 through May 3, 2014. OWCP then determined that, after a credit is taken for this refund, appellant still received an overpayment of \$6,912.54. Although it explained that the overpayment occurred due to improper withholding of life insurance premiums, it did not provide any explanation as to how it calculated this figure. The preliminary decision reads, "Postretirement 0 [percent] reduction owed...." There is nothing following those words. The final decision simply states, "The preliminary decision is incorporated herein by reference." OWCP regulations require that a final decision shall contain findings of fact and a statement of reasons. As OWCP failed to follow these regulations it denied appellant an effective opportunity to present relevant evidence and argument on the amount of the overpayment before issuing a final decision on the matter.¹² Accordingly, the Board will set aside OWCP's September 18, 2014 decision on the issue of amount and remand the case for a new and proper preliminary determination.¹³

CONCLUSION

Appellant received an overpayment of compensation as a result of an under withholding of premiums for life insurance coverage, but the case is not in posture for decision on the amount of this overpayment. OWCP must issue a preliminary determination clearly explaining how it calculated the amount. As the new preliminary determination will allow appellant to request waiver and present financial information in support thereof, the Board need not address on this appeal whether OWCP properly denied waiver or if it properly set the rate of recovery for continuing compensation.

¹¹ *Id.*, see also *J.L.*, Docket No. 14-1094 (issued June 25, 2015).

¹² 20 C.F.R. § 10.126 (2011); Federal (FECA) Procedure Manual, Part 2 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200(4)(a)(2) (2004).

¹³ *Rebecca F. Reed*, Docket No. 04-2011 (issued March 3, 2005); *Vincent E. Washington*, 42 ECAB 636, 640 (1991); *Sandra K. Neil*, 40 ECAB 924, 927 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 18, 2014 is affirmed in part as to fact of overpayment but set aside as to amount of overpayment. The case is remanded for further action consistent with this opinion.

Issued: August 12, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board