

FACTUAL HISTORY

On August 20, 2010 appellant, then a 58-year-old customer service supervisor, filed an occupational disease or illness claim (Form CA-2). In a narrative statement, she indicated that she became a supervisor in 1986 and her job included keyboard entry, filing, and writing. Appellant noted that she underwent left thumb surgery on March 5, 2010. OWCP accepted left trigger finger, left tendon ganglion, and left carpal tunnel syndrome.

Appellant began receiving compensation on the periodic rolls as of May 8, 2011. The compensation payments included deductions for basic life insurance (BLI) and optional life insurance (OLI) premiums.

On June 17, 2013 OWCP received a June 7, 2013 letter from the Office of Personnel Management (OPM) indicating that appellant's election as a compensationer had been no reduction in basic life insurance coverage. This election requires the payment of additional premiums. OPM indicated that the commencing date for these additional life insurance premiums was March 10, 2012.

In a letter dated November 20, 2013, OWCP advised appellant of a preliminary determination that an overpayment of \$3,117.24 had been created from March 11, 2012 to October 19, 2013. It indicated that during this period, the additional premiums for postretirement life insurance benefits should have been deducted in the amount of \$148.44 for each 28-day compensation period. The overpayment amount was determined by multiplying \$148.44 by 21 compensation periods. OWCP found that appellant was not at fault in creating the overpayment. Appellant was advised to complete an OWCP-20 form and submit relevant financial evidence with respect to waiver.

Appellant requested a precoupment hearing with OWCP Branch of Hearings and Review. On December 26, 2013 she submitted an OWCP-20 and financial information regarding expenses. A hearing was held on June 23, 2014. The hearing representative requested that appellant submit additional financial evidence, including a federal retirement (Thrift Savings Plan, or TSP) statement.

On August 1, 2014 OWCP received additional evidence, including a TSP statement, a pay stub from appellant's spouse, and a statement as to earnings. By decision dated August 1, 2014, the hearing representative finalized the preliminary overpayment of \$3,117.24. He stated he had requested additional financial evidence, but none had been received. The hearing representative denied waiver of the overpayment and found the overpayment could be recovered by deducting \$300.00 from continuing compensation.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees Group Life Insurance (FEGLI) Program, most civilian employees of the Federal Government are eligible to enroll in BLI and other options. Premiums are withheld from an employee's pay.² These premiums are still withheld while an employee is

² C.B., Docket No. 12-87 (issued May 23, 2012).

receiving disability compensation.³ A claimant may elect life insurance benefits when separated or retired from federal employment, or after the claimant is separated from the employing establishment as a compensator and coverage is effective immediately.⁴ The default reduction is 75 percent (no cost), but a claimant can elect no reduction (or 50 percent reduction) and OWCP deducts the appropriate premiums from compensation payments.⁵ When premiums are not withheld, an overpayment arises because OWCP must pay the full amount to OPM upon discovery of the error.⁶

ANALYSIS -- ISSUE 1

In the present case, the record does establish that an overpayment was created from March 11, 2012 to October 19, 2013. OPM advised OWCP that appellant had selected basic life insurance benefits, at no reduction, commencing March 10, 2012. OWCP therefore must deduct the appropriate premiums for the coverage from that date.

The record indicates that there were 21 compensation payments issue covering the period March 11, 2012 to October 19, 2013. None of the payments included a life insurance premium deduction. As of October 20, 2013 OWCP began deducting \$148.44 from continuing compensation. The overpayment was calculated by multiplying \$148.44 by 21, resulting in \$3,117.24 as an overpayment, with no contrary evidence of record. The Board finds OWCP properly found an overpayment of \$3,117.24 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA⁷ provides: “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.”⁸ Since OWCP found appellant to be without fault in the creation of the overpayment, OWCP may only recover the overpayment if recovery would neither defeat the purpose of FECA nor be against equity and good conscience. The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of Title 20 of the Code of Federal Regulations.

According to section 10.436, recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary “needs substantially all of his or

³ 5 U.S.C. § 8707(b)(1).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15(c)(3) (March 2014).

⁵ *Id.* The premiums are deducted automatically in the case management system when payments are issued.

⁶ *See P.H.*, Docket No. 13-642 (issued August 12, 2013).

⁷ 5 U.S.C. § 8101 *et seq.*

⁸ *Id.* at § 8129(b).

her current income (including compensation benefits) to meet current ordinary and necessary living expenses,” and, also, if the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.⁹ For waiver under the “defeat the purpose” of FECA standard, appellant must show that he needs substantially all of his current income to meet current ordinary and necessary living expenses, and that his assets do not exceed the resource base.¹⁰

Section 10.437 provides that recovery of an overpayment would be against equity and good conscience if: (a) the overpaid individual would experience severe financial hardship in attempting to repay the debt; (b) the 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.

ANALYSIS -- ISSUES 2 & 3

Appellant’s argument on appeal is that OWCP did not consider all the evidence of record. As noted in the history of the case, on August 1, 2014 OWCP received additional financial information. The hearing representative did not consider the evidence in the August 1, 2014 decision, as he stated that he did not receive any evidence after the June 23, 2014 hearing.

In the case of *William A. Couch*,¹¹ OWCP had not reviewed evidence that had been received by OWCP four days prior to issuance of the final decision. The Board explained that it was critical that OWCP review all evidence submitted prior to the issuance of a final decision, noting that the Board can review only evidence that was before OWCP at the time of the decision and Board decisions are final as to the subject matter appealed. The case was remanded for proper consideration of the evidence.

The principle set forth in *Couch* was applied to evidence received on the date of the OWCP decision in *Linda Johnson*.¹² Evidence received on the date of the decision must properly be reviewed by OWCP. When relevant evidence is received on the date of a hearing representative’s decision and was not considered by the hearing representative, the case must be remanded to OWCP.¹³

In the present case, there was relevant financial evidence received on the same date OWCP issued its decision, August 1, 2014. For example, the hearing representative specifically requested that appellant submit evidence with respect to TSP assets, and this was among the evidence received. As the financial evidence relates to both the waiver and recovery of the

⁹ OWCP procedures provide that the 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

¹⁰ See *Robert E. Wenholz*, 38 ECAB 311 (1986).

¹¹ 41 ECAB 548 (1990).

¹² 45 ECAB 439 (1994).

¹³ See *E.Z.*, Docket No. 14-274 (issued November 10, 2014).

overpayment, the case will be remanded to OWCP in accord with Board precedent. After consideration of the evidence of record and any additional development as deemed necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that an overpayment of \$3,117.24 was created from March 11, 2012 to October 19, 2013. The Board further finds that the case must be remanded on the issues of waiver and recovery as appellant timely submitted relevant information that was not considered by OWCP.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2014 is affirmed with respect to fact and amount of overpayment, and set aside and remanded with respect to waiver and recovery of the overpayment.

Issued: January 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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