

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

J.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
American Fork, UT, Employer**

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**Docket No. 14-1094
Issued: June 25, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 7, 2014 appellant filed a timely appeal from a February 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,242.66 because it failed to deduct premiums for the optional postretirement basic life insurance from April 1, 2012 to February 8, 2013; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 10, 1983 appellant, then a 34-year-old letter carrier, filed an occupational disease claim alleging that he sustained arthritis in his knees causally related to factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. OWCP accepted the claim for an aggravation of bilateral degenerative knee arthritis. It authorized multiple knee surgeries, including bilateral total knee replacements. Appellant was paid wage-loss compensation benefits until he returned to duty as a clerk. By decision dated November 12, 1993, OWCP reduced appellant's compensation benefits based on its finding that his actual earnings as a clerk effective November 24, 1984 fairly and reasonably represented his wage-earning capacity. Appellant later retired from the Federal Government.

On September 26, 2011 appellant underwent a revision of a left total knee arthroplasty and elected to resume to FECA benefits from OWCP in lieu of retirement benefits from the Office of Personnel Management (OPM). Although he had elected FECA benefits on that date, he continued to receive OPM benefits erroneously through March 30, 2012. On April 5, 2012 OPM provided OWCP with a form listing the required health and life insurance deductions. This form included postretirement basic life insurance premiums at the no reduction level. Appellant was paid FECA compensation benefits retroactive to September 18, 2011, less the amount owed to OPM for the dual benefit. OWCP then placed him on ongoing compensation effective April 1, 2012. However, although OWCP deducted the designated life insurance and health benefit premiums, they had failed to deduct from the ongoing periodic rolls payments the additional premium for the designated postretirement basic life insurance at the no reduction level.

On March 13, 2013 appellant advised OWCP that, as he had retired, he did not have life insurance through the government and on April 8, 2013 appellant requested that OWCP refund all deductions made for life insurance since he had been returned to FECA.

Upon review of the fiscal record, OWCP determined that appellant was covered by life insurance coverage but that it had failed to deduct the appropriate premiums. On June 6, 2013 OWCP notified appellant of its preliminary determination that he had received an overpayment of \$1,242.66 because OWCP had failed to make the proper deductions for life insurance. As appellant had elected the postretirement basic life insurance coverage at the no reduction level, OWCP had under deducted premiums from April 1, 2012 to February 8, 2013. The evidence that OWCP relied upon to determine fact of overpayment was the notice from OPM dated April 5, 2012.

OWCP calculated the overpayment by multiplying the amount of the premium per day, \$5.523, by the 225 days of the period (April 1, 2012 through February 8, 2013) to find an overpayment of \$1,242.66. It further informed appellant of its preliminary determination that he was not at fault in the creation of the overpayment. OWCP requested that he complete an enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On June 10, 2013 appellant requested a prerecoupment hearing. He disagreed that he had received an overpayment of compensation. In an overpayment recovery questionnaire, appellant described his income and expenses. He further submitted correspondence from OWCP which reflected that it had deducted life insurance from his compensation payments, including the April 19, 2012 letter from OWCP placing him on the periodic rolls and indicating that it was deducting optional life insurance.

At the telephonic hearing, held on November 18, 2013, appellant related that he did not know that he had two separate life insurance policies or that he still had life insurance after retirement. He received a gross income of \$2,700.00 and net income of \$1,900.00 in addition to his wife's income. The hearing representative requested that he provide documentation of his expenses. Appellant submitted an updated overpayment recovery questionnaire with documentation of expenses, including utility bills for several months and various yearly expenses, including such items as car repair expenses, dental expenses, and vision expenses.

In a letter dated December 3, 2013, appellant related that he did not have basic life insurance once he retired as he believed all life insurance stopped at retirement. He asserted that OWCP should not have deducted premiums for optional life insurance. Appellant asserted that he was not provided with an opportunity to accept or decline life insurance after retirement. He submitted a statement from life insurance policies he had personally obtained after retirement.

By decision dated February 5, 2014, an OWCP hearing representative finalized the June 6, 2013 preliminary overpayment determination. She found that appellant had received an overpayment of \$1,242.66 because OWCP had failed to deduct premiums for postretirement basic life insurance at the no reduction option from April 1, 2012 to February 8, 2013. The hearing representative noted that "[w]hile [appellant] believes that past life insurance deductions were made in error, he has provided no evidence from OPM that this was the case." She further determined that although appellant was without fault, he was not eligible for waiver after finding that appellant's income exceeded his ordinary and necessary living expenses by more than \$50.00. The hearing representative further determined that repayment would not be against equity and good conscience. She instructed appellant to forward monthly installments of \$125.00 until he had repaid the debt.

On appeal appellant contends that he did not elect postretirement basic life insurance. He asserted that he was not charged premiums for basic life insurance while working for the employing establishment and questions whether he would have received the benefit had he died. Appellant further questions why OWCP used his preretirement information rather than postretirement annuity statements. He alleges that the employing establishment notified him that he would not receive life insurance after he retired as evidenced by the fact that he purchased private life insurance. Appellant asserts that he had no expectation of coverage and requested a refund of all money collected by OWCP.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.² The coverage for basic life insurance is effective unless waived,³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance

² 5 U.S.C. § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁵ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,⁶ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.⁷

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).⁸

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.⁹ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of Optional insurance, is considered to have waived it and does not have that type of Optional insurance.¹⁰ When an under-withholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to the OPM upon discovery of the error.¹¹

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.¹² When an overpayment has been made to an individual because of an error of fact or law,

⁵ *Id.* at § 8706.

⁶ *Id.* at § 8707(b)(2).

⁷ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

⁸ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁹ 5 C.F.R. § 870.504 (a)(1)

¹⁰ *Id.* at 504(b).

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

¹² *Id.* at § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹³

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$1,242.66 for the period April 1, 2012 to February 8, 2013.

Appellant elected to receive compensation benefits from OWCP instead of retirement benefits from OPM effective September 18, 2011. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance at whatever option appellant had selected.¹⁴ He maintained, however, that he did not have life insurance after he retired and the record does not contain any documentation reflecting his election of the optional postretirement basic life insurance at no reduction. While OPM notified OWCP by form dated April 5, 2012 that appellant had elected that option, it did not provide documentation of that election. OWCP procedures state that the preliminary notice of overpayment must clearly set forth the reason for the overpayment and contain a clearly written explanation as to how the overpayment was calculated.¹⁵ In this case, the hearing representative simply relied on a statement from OPM and placed the burden on appellant to disprove the fact of the overpayment. A claimant is entitled to an adequate statement of reasons with respect to any final decision by OWCP.¹⁶

In the *N.J.* case,¹⁷ the Board remanded the case to OWCP for further development because the evidence was unclear as to why postretirement optional life insurance premiums had been deducted as of a certain date. Similarly in this case the evidence fails to establish the basis for the optional postretirement life insurance premiums for the no reduction option as the signed form is not in the record.

Appellant would be responsible for the additional cost associated with his election of the optional postretirement basic life insurance; however, as OWCP has not factually established that appellant elected the optional coverage, there can be no finding of overpayment. The case will be remanded to OWCP.¹⁸ On remand, OWCP should obtain from OPM the executed

¹³ *Id.* at § 8129(a).

¹⁴ *See supra* note 11.

¹⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

¹⁶ *See L.D.*, Docket No. 12-1408 (issued April 26, 2013) (finding that OWCP did not provide adequate reasons for calculating an overpayment when the record contained no worksheets or other specific documentation confirming the amount of compensation received).

¹⁷ Docket No. 13-2164 (issued April 18, 2014).

¹⁸ *See generally id.* (finding that the information from OPM did not sufficiently establish the date that a claimant's deductions for postretirement basic life began); *D.R.*, Docket No. 13-1531 (issued October 21, 2013) (finding that OWCP improperly found that a claimant received dual benefits from OPM and OWCP when the record did not contain clear documentation establishing that he received benefits from OPM during the period in question).

election form completed by appellant prior to determining whether appellant received an overpayment of compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$1,242.66 because it failed to deduct premiums for the optional postretirement basic life insurance from April 1, 2012 to February 8, 2013.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 25, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ In view of the Board's finding that the case is not in posture for decision regarding whether appellant received an overpayment of compensation, it is premature to address the issue of waiver.