

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

T.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Attleboro, MA, Employer**

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**Docket No. 15-566
Issued: June 9, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 21, 2015 appellant filed a timely appeal from the November 13, 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 to review the merits of this case.

ISSUES

The issues are: (1) whether appellant received a \$1,116.47 overpayment of compensation from February 23 through November 16, 2013; and (2) whether he was at fault in creating this overpayment.

FACTUAL HISTORY

On January 17, 2012 appellant, then a 56-year-old postal clerk, filed an occupational disease claim alleging that his cervical laminectomy and myelopathy were causally related to the

¹ 5 U.S.C. § 8101 *et seq.*

lifting and bending he performed in his federal employment. During the week of December 25, 2011, he felt a tingling and numbness down his arms and into his fingers. Then, on December 30, 2011, appellant got out of bed to go to the bathroom and could hardly walk.

OWCP accepted appellant's claim for cervical spondylosis with myelopathy at C3-T2 and thoracic spondylosis with myelopathy at T2. It also accepted intervertebral disc disorder with myelopathy, cervical region. Appellant received compensation for temporary total disability on the periodic rolls beginning October 21, 2012. Deductions were made for basic and optional life insurance. OWCP paid compensation through direct deposit.

On May 6, 2013 appellant completed and signed an SF-2818, Continuation of Life Insurance Coverage form as an annuitant or compensation. He elected to receive basic life insurance in retirement/compensation at no reduction. OWCP did not deduct premiums for this coverage until November 17, 2013. The Office of Personnel Management (OPM) advised OWCP on November 5, 2013 that appellant had elected coverage at no reduction and that the commencement date for deductions was February 23, 2013.

OWCP made a preliminary determination that appellant received a \$1,116.47 overpayment of compensation as it had failed to deduct premiums for so-called postretirement basic life insurance. It stated that premiums for the period February 23 through November 16, 2013 amounted to \$1,116.47. OWCP further found that appellant was at fault in creating the overpayment, as he was aware or should have been aware that premiums for the coverage he elected were not being deducted from his compensation payments. It quoted from correspondence sent to him on "November 27, [sic] 2012" advising him that if he had optional life insurance coverage, but no deduction for it was shown, he was to contact OWCP immediately: "You are still responsible for these premiums."

Appellant contested the fault finding. He explained that he renewed his life insurance policy over the telephone with Human Resources Shared Services: "I told him to keep everything the same. Appellant told me what to check off and I was told that everything would stay the same including my paycheck." He noted that OWCP's November 7, 2012 correspondence made no mention of postretirement basic life insurance, and he added that he had not retired.

In a decision dated November 13, 2014, OWCP finalized its preliminary determination. It found that appellant was at fault in creating an overpayment of compensation in the amount of \$1,116.47, as he was aware or should have been aware that premiums for the postretirement basic life insurance coverage he elected were not being deducted.

Appellant argues on appeal that he informed OPM during a telephone call on July 23, 2012 that he did not want any changes to his life insurance policy. He states that he was led to believe that life insurance forms were being filled out as he intended with no additions such as postretirement life insurance. Appellant expressed surprise when he was notified in November 2013 that deductions were supposed to be made as of February 2013, as his paycheck never changed. "So I thought OPM did their job correct but in fact 'they did not.'"

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 the premiums for basic and optional life coverage are withheld from the employee's pay.⁴ At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensation chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensation was an employee will be used to withhold premiums from his compensation payments.⁵ 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.⁶

The basic life insurance benefit will reduce at a rate of 2 percent per month until it reaches 25 percent of its original value, unless the postretirement no deduction option has been elected. The claimant must elect the coverage when he separates from federal employment, usually after 12 months of leave without pay. The coverage takes effect immediately, regardless of age, and premiums are paid until time of death. If postretirement is elected prior to age 65, premiums for both postretirement and basic life insurance are paid until age 65, at which time basic life insurance premiums stop. A premium is charged for the "no reduction" option, which retains the full value of the basic life insurance coverage after age 65, without reduction. The claimant must pay a premium for this coverage from the date of the election. OPM will notify OWCP of this coverage if it applies, and OWCP is responsible for deducting premiums when advised to do so by OPM.⁷

OWCP should provide a clearly written statement explaining how the overpayment was calculated.⁸

² 5 U.S.C. § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

⁵ *Id.* at § 8706(b).

⁶ *Id.* at § 8707(d); *see James Lloyd Otte*, 48 ECAB 334 (1997).

⁷ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.4.a, 4.b (August 2004). OPM must advise OWCP of the coverage, and will provide the effective date and the per annum salary. *Id.*, Exhibit 2 (postretirement basic life insurance p. 2). Premiums are calculated using the "BASE" pay on which compensation is computed. This amount is rounded-up to the nearest even \$1,000 and an additional \$2,000 is added. *Id.*, Exhibit 2 (basic life insurance p. 1).

⁸ *Id.* at Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4.a (June 2009).

ANALYSIS -- ISSUE 1

Appellant received wage-loss compensation on the periodic rolls beginning October 21, 2012. From this compensation OWCP deducted premiums for basic and optional life insurance. On May 6, 2013, however, appellant completed and signed a Form SF-2818 electing to continue basic life insurance at “no reduction” while in receipt of compensation. As the instructions for completing the Form SF-2818 make clear: “You pay an extra premium for this choice.” Although OWCP should have deducted the extra premium for this coverage from appellant’s periodic compensation, OWCP took no action until November 17, 2013. Appellant thus received an overpayment of compensation.

As OPM advised that the commencement date for appellant’s formal election was February 23, 2013, the period of the overpayment was February 23 through November 16, 2013. This was the period during which appellant received full, unreduced coverage for basic life insurance without the extra premium for this coverage being deducted from his compensation payments. Accordingly, the Board will affirm OWCP’s November 13, 2014 decision on the issue of fact of overpayment.

The amount of the overpayment is simply the premium that should have been deducted from February 23 through November 16, 2013 in accordance with appellant’s formal election. OWCP stated in its preliminary determination that the overpayment totaled \$1,116.74 at his final salary. However, it did not clearly explain to appellant how it calculated that amount. OWCP did not establish how it rounded his final salary or added \$2,000.00 to obtain the basic insurance amount. It did not disclose the compensation premium rate to be withheld every four weeks for each \$1,000 of the basic insurance amount before age 65. OWCP did not explain why appellant’s May 6, 2013 election was effective on February 23, 2013, and it did not indicate how many four-week periods there were from February 23 through November 16, 2013. The Board finds that, as it did not provide a clearly written statement explaining how the overpayment was calculated, such that he could reasonable understand that the calculation was correct, this case is not in posture for decision on the amount of the overpayment. Accordingly, the Board will set aside OWCP’s November 13, 2014 decision as to amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating it. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she received from OWCP are proper. The recipient must establish good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or (2) Failed to provide information which he or she knew or should have known to be material; or (3) Accepted a payment which he or she knew or should have known to be incorrect (this provision applies only to the overpaid individual).⁹

⁹ 20 C.F.R. § 10.433(a).

Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he is being overpaid.¹⁰

ANALYSIS -- ISSUE 2

OWCP found that appellant was at fault in creating the overpayment because he accepted a payment which he knew or should have known to be incorrect. However, the compensation payments appellant received prior to his May 6, 2013 election were correct at the time they were directly deposited into his account, at least insofar as no extra premiums were deducted for full, unreduced basic life insurance. He cannot be found at fault for accepting payments that were correct at the time of deposit.

This is consistent with the Board's line of cases regarding overpayments arising from a retroactive election of retirement benefits.¹¹ The third standard of fault relates to the overpaid individual's knowledge at the time he accepted a FECA payment in question. It does not relate to the claimant's knowledge that an election of benefits will retroactively cause an overpayment.

In its preliminary determination, OWCP noted correspondence sent to appellant on November 27, 2012 advising him that, if he had optional life insurance coverage, but no deduction for it was shown and he was to contact OWCP immediately. The record establishes no such correspondence. That correspondence did not ask appellant to review whether deductions were properly being shown for optional life insurance. The Board notes that similar correspondence dated November 13, 2014 did contain the language that OWCP quoted, but this postdated the period of the overpayment and could not have put appellant on notice that deductions were not being made for his "no reduction" election.

Whether an individual is at fault with respect to the creation of an overpayment depends on the circumstances of the overpayment. The circumstances here do not support OWCP's finding that appellant was at fault in accepting compensation payments covering the entire period from February 23 through November 16, 2013. Appellant was not at fault for accepting payments prior to his May 6, 2013 election. He was not at fault for accepting the first incorrect payment after the May 6, 2013 election because, under the principle explored in *Tammy Craven*, Docket No. 05-249 (issued July 24, 2006) (*order granting petition for reconsideration and reaffirming prior Board decision*), one of the consequences of electronic fund transfers is that in many cases the requisite knowledge is lacking at the time of deposit. Whether appellant was at fault for accepting later payments through November 16, 2013 depends on whether and when he

¹⁰ *Id.* at § 10.433(b).

¹¹ *D.M.*, Docket No. 14-548 (issued February 20, 2015) (reversing a finding of fault as the claimant was entitled to FECA benefits at the time she accepted the payments prior to her retroactive election of OPM benefits); *M.R.*, Docket No. 14-844 (issued November 21, 2014) (as there was no evidence that the claimant should have known that the September 21, 2013 compensation payment was incorrect when he accepted that payment, the Board found that the record did not support OWCP's finding of fault). But see *L.S.*, Docket No. 14-1690 (issued December 5, 2014) (a claimant who makes an election of benefits between FECA and OPM may be charged with knowledge that subsequent dual payments are incorrect).

had the required knowledge. OWCP made no distinction in its finding. Accordingly, the Board finds that this case is not in posture on the issue of fault. The Board will set aside its November 13, 2014 decision on that issue and remand the case for further necessary development and a *de novo* decision.

After reviewing the chain of events and exhibits appellant submitted on appeal, the Board notes that “postretirement” basic life insurance can be a confusing name because it applies not only to those who have retired but also to those who have been separated from the employment rolls and placed on the periodic compensation rolls of OWCP and wish to continue basic life insurance. The first are known as annuitants, the second are known as compensationers. When appellant made his election on May 6, 2013, he did so as a compensationer. Even so, the premium he was required to pay for his continuation of basic life insurance after separation is commonly referred to as postretirement basic life insurance. Thus the confusion for claimants who owe the premium but who have not retired.

CONCLUSION

The Board finds that OWCP has established the fact of overpayment of compensation due to an under withholding of life insurance premiums. The Board finds that this case is not in posture for decision on the amount of the overpayment because OWCP did not provide a clearly written statement explaining how the overpayment was calculated. The Board further finds that this case is not in posture on the issue of fault. The circumstances of the overpayment do not fully support OWCP’s finding of fault.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed on the issue of fact of overpayment and is otherwise set aside. The case is remanded for further action.

Issued: June 9, 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