



## **FACTUAL HISTORY**

OWCP accepted that on January 11, 2013 appellant, then a 36-year-old mail handler, sustained a left ankle sprain and left rupture of the Achilles tendon when he slipped off a piece of equipment. He began receiving wage-loss compensation on February 26, 2013 and was placed on the periodic rolls effective June 2, 2013.

By letter dated May 31, 2013, OWCP informed appellant of the weekly pay rate used to compute his gross compensation benefits and deductions for his elected benefits of optional life insurance (OLI), basic life insurance (BLI), and health insurance. Regular payments for BLI were noted as \$16.50. No deductions were indicated for post-retirement basic life insurance (PRBLI). OWCP utilized appellant's annual salary of \$52,994.00 to calculate the weekly pay rate.

On March 26, 2014 OWCP notified appellant of a proposal to terminate his wage-loss compensation benefits because he was not experiencing any residuals or disability connected to the employment injury and was capable of returning to full-duty work.<sup>2</sup>

By letter dated June 24, 2014, the Office of Personnel Management (OPM) advised OWCP that appellant's final base salary was \$53,670.00 for which the Federal Employees' Group Life Insurance (FEGLI) Program was based. OPM further noted that appellant had elected PRBLI effective March 8, 2014.

By letter dated August 6, 2014, OWCP informed appellant that, beginning July 27, 2014, deductions for the additional life insurance of PRBLI would be made in the amount of \$117.08. It further noted that \$16.80 would be deducted for BLI.

On August 7, 2014 OWCP made preliminary findings that appellant received an overpayment of \$586.92 for the period March 9 to July 26, 2014 because no deductions were made for PRBLI and BLI should have been deducted at \$16.80, up from \$16.50. It found that appellant was without fault in the creation of the overpayment. The memorandum explained that appellant's PRBLI became effective on March 8, 2014 and his annual salary for life insurance purposes was \$53,670.00 not the \$52,994.00 amount used. As appellant's annual salary increased, the BLI increased to \$16.80 as it should have been deducted from the higher salary rate. Based on five plates of nondeduction for PRBLI at \$117.08 per plate, OWCP calculated an overpayment of \$585.42.<sup>3</sup> It further noted that the difference of the BLI deductions was .30 cents per plate (\$16.80 - \$16.50) which was multiplied by five plates resulting in an overpayment of \$1.50 for BLI deductions. OWCP then added the \$585.42 for PRBLI with \$1.50 for BLI resulting in an overpayment of \$586.92 for the period March 9 to July 26, 2014.

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<sup>2</sup> The Board notes that no final termination decision has been issued with respect to the proposed termination of appellant's wage-loss compensation benefits.

<sup>3</sup> OWCP explained that the extra two cents were due to a fraction of a penny actually owed as part of the \$117.08 per plate, which entailed the regular deduction for PRBLI.

As OWCP determined that appellant was without fault in the creation of the overpayment, it requested that he submit financial information pursuant to the enclosed overpayment recovery questionnaire (OWCP-20) within 30 days if he was requesting waiver of the overpayment. It noted that waiver would be denied if appellant failed to furnish the information requested on the enclosed OWCP-20 form with supporting documentation within 30 days.

In an August 13, 2014 OWCP telephone note, appellant requested a telephone conference pertaining to the preliminary overpayment decision.

A telephone conference was held on August 22, 2014. The senior claims examiner listed information provided by appellant pertaining to his income and expenses on an OWCP-20 excel sheet and requested copies of bills to support the amounts given. Appellant stated that he was separated from his wife, but continued to support her, spending approximately \$100.00 to \$200.00 per month. He further stated that he provided support in the amount of \$300.00 per month to his son who recently started college. The record was held open for 15 days.

The August 22, 2014 OWCP-20 form indicated that appellant received a monthly income of \$2,899.65. Appellant reported monthly household expenses in the amount of \$200.00 for food, \$100.00 for clothing, \$1,670.00 for rent/mortgage, \$200.00 for electricity, \$100.00 for water, \$150.00 for telephone, \$381.00 for car loan payment, \$200.00 for gas, \$50.00 for car maintenance, \$50.00 for insurance, \$10.00 for medical expenses unreimbursed, \$150.00 for cable, \$15.00 for newspapers, and \$80.00 for haircuts totaling \$3,356.00. He reported \$50.00 in cash on hand and \$50.00 in his checking account totaling \$100.00 in net assets. Taking the total net monthly income of \$2,899.65 and subtracting the monthly expenses of \$3,356.00 resulted in a difference of -\$456.35.

By letter dated August 25, 2014, OWCP requested that appellant provide copies of bills to support the dollar amounts stated on the OWCP-20 form.

On September 15, 2014 appellant submitted various bills in support of his request for waiver of recovery. He submitted an itemized transaction history for his checking account for the period July 7 to August 12, 2014 which indicated a total balance of \$70.41. The transaction history showed numerous payments for bills and miscellaneous items during this time frame. Appellant further provided a Bank of America Home Loan Bill for \$1,672.79 in monthly mortgage payments, an August 5, 2014 Sherman Residential Rental Agreement which indicated various monthly charges, an August 20, 2014 water bill in the amount of \$94.10, and an August 7, 2014 electric bill in the amount of \$337.11. He also submitted an August 18, 2014 college enrollment verification form for his son.

By decision dated September 16, 2014, OWCP finalized the preliminary determination finding that appellant was overpaid in the amount of \$586.92 for the period March 9 to July 26, 2014 because no deductions were made for PRBLI and an incorrect amount was used for BLI deductions. It found that he was without fault in the creation of the overpayment but denied waiver of recovery because he failed to submit the requested and required copies of documentation to verify his expenses and bank balance. OWCP determined that appellant could repay the overpayment by deducting \$133.00 from continuing compensation every 28 days.

## LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of 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 duty.<sup>4</sup> Section 8129(a) of FECA provides, in pertinent part: When an overpayment has been made to an individual under this subchapter 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 an individual is entitled.<sup>5</sup>

Section 8116(a) of FECA provides that while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specified instances.<sup>6</sup>

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.<sup>7</sup> The coverage for basic life is effective unless waived<sup>8</sup> and premiums for basic and optional life coverages are withheld from the employee's pay.<sup>9</sup>

FECA and its implementing regulations provide that an employee entitled to disability compensation benefits may continue BLI coverage without cost under certain circumstances<sup>10</sup> and may also retain the OLI.<sup>11</sup> At separation from the employing establishment, FEGLI insurance will either terminate or be continued under compensation status.<sup>12</sup> If the compensation chooses to continue BLI and OLI insurance coverage, the schedule of deductions made while the compensation was an employee will be used to withhold premiums from his or her compensation payments.<sup>13</sup> Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.<sup>14</sup>

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *Id.* at § 8116(a).

<sup>7</sup> 5 C.F.R. § 870.201.

<sup>8</sup> *Id.* at § 870.204(a).

<sup>9</sup> *Id.* at § 870.401(a).

<sup>10</sup> *Id.* at § 870.701, subpart G.

<sup>11</sup> *Id.* at § 871.201, subpart B; 8702.201, subpart B; 873.203, subpart B.

<sup>12</sup> *Id.* at § 870.501.

<sup>13</sup> *Id.* at § 872.410, subpart D.

<sup>14</sup> *Scherri L. Stanley*, 53 ECAB 433 (2002).

A final decision of OWCP shall contain findings of fact and a statement of reasons.<sup>15</sup> With respect to overpayment decisions, OWCP must provide clear statements showing how the overpayment was calculated.<sup>16</sup> Its regulations on the recovery of overpayments provide that before collecting the overpayment, it must provide the claimant with written notice of the fact and amount of the overpayment, the finding of fault, right to submit evidence challenging the fact, amount or finding of fault, and the right to request waiver of the overpayment.<sup>17</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$586.92 for the period March 9 to July 26, 2014.

The record shows that the overpayment occurred because no deductions were made for PRBLI and an incorrect amount was used for BLI deductions from March 9 to July 27, 2014. OPM informed OWCP that appellant's PRBLI became effective on March 8, 2014 and his annual salary for life insurance purposes was \$53,670.00, not \$52,994.00. With the increased salary, deductions for BLI increased to \$16.80 from \$16.50.

The August 7, 2014 OWCP memorandum explained that an overpayment of \$585.42 occurred from March 9 to July 27, 2014 based on five plates of nondeduction for PRBLI at \$117.08 per plate. An additional .30 cents should have been deducted per plate for BLI deductions which amounted to \$1.50 for five plates.<sup>18</sup> After adding \$585.42 for PRBLI to \$1.50 for BLI, OWCP properly calculated a total overpayment of \$586.92 for the period March 9 to July 26, 2014.<sup>19</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>20</sup> These statutory guidelines are found in section 8129(b) of FECA which states: Adjustment or recovery of an overpayment 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 this subchapter or would be against equity and good conscience.<sup>21</sup> If OWCP finds a claimant to

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<sup>15</sup> 20 C.F.R. § 10.126.

<sup>16</sup> *James Tackett*, 54 ECAB 611 (2003); *Sandra K. Neil*, 40 ECAB 924 (1989).

<sup>17</sup> 20 C.F.R. § 10.431.

<sup>18</sup> Coverage for basic life is effective unless waived and premiums for basic and optional life coverages are withheld from the employee's pay. 5 C.F.R. § 870.204(a) and § 870.401(a). Thus, appellant is responsible for payment of the premiums and the premiums must be deducted from his compensation payments. *W.J.*, Docket No. 12-672 (issued August 24, 2012).

<sup>19</sup> *S.W.*, Docket No. 11-895 (issued December 5, 2011).

<sup>20</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>21</sup> 5 U.S.C. § 8129(b).

be without fault in the matter of an overpayment, then, in accordance with section 8129(b), it may only recover the overpayment if it determined that recovery of the overpayment would neither defeat the purpose of FECA nor be against equity and good conscience.

According to 20 C.F.R. § 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 her 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.<sup>22</sup> According to 20 C.F.R. § 10.437, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an 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.<sup>23</sup> To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

As appellant was found to be without fault in the creation of the overpayment in compensation, waiver must therefore be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity, and good conscience. The Board finds that the case is not in posture for a decision regarding waiver of recovery of the overpayment.<sup>25</sup>

On September 16, 2014 OWCP denied waiver of recovery of the overpayment because appellant did not submit the requested and required copies of documentation to verify his expenses and bank balance. A review of the record, however, reveals that OWCP received on September 15, 2014 an itemized checking account transaction history dated July 7 to August 12, 2014 with a total balance of \$70.41, a Bank of America Home Loan Bill for monthly mortgage payments of \$1,672.79, an August 5, 2014 Sherman Residential Rental Agreement which indicated various monthly charges, an August 20, 2014 water bill in the amount of \$94.10, and an August 7, 2014 electric bill in the amount of \$337.11. Appellant also submitted an August 18, 2014 college enrollment verification form for his son.

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<sup>22</sup> 20 C.F.R. § 10.436. An individual is deemed to need substantially all of his or her monthly income to meet current and ordinary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245 (2004). OWCP procedures provide that 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) (June 2009).

<sup>23</sup> *Id.* at § 10.437(a), (b).

<sup>24</sup> *Id.* at § 10.437(b)(1).

<sup>25</sup> *J.L.*, Docket No. 12-924 (issued November 6, 2012).

Board precedent holds that OWCP must review all the evidence submitted by a claimant and received by OWCP prior to the issuance of a final decision.<sup>26</sup> As the Board's jurisdiction is final as to the subject matter, it is crucial that OWCP accomplish this.<sup>27</sup>

Because OWCP found that appellant failed to submit supporting financial documentation, it is clear that it did not consider the factual evidence submitted by him on September 15, 2014 in reaching its overpayment decision and denying waiver of recovery.<sup>28</sup> Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.<sup>29</sup> As OWCP failed to address all of the relevant evidence of record at the time it issued its September 16, 2014 decision, the Board will set aside the September 16, 2014 decision on the issue of waiver and recovery and remand for consideration and review of all the evidence. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on whether overpayment should be waived.<sup>30</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received a \$586.92 overpayment of compensation for the period March 9 to July 26, 2014 and was not at fault for the overpayment. Consequently, the case must be remanded to OWCP to determine his eligibility for waiver of recovery of the overpayment.<sup>31</sup>

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<sup>26</sup> See *M.B.*, Docket No. 09-17 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision); *William A. Couch*, 41 ECAB 548 (1990); 20 C.F.R. § 501.6(c).

<sup>27</sup> *Id.*

<sup>28</sup> *R.L.*, Docket No. 14-1006 (issued January 26, 2015).

<sup>29</sup> *Willard McKennon*, 51 ECAB 145 (1999).

<sup>30</sup> *J.B.*, Docket No. 11-2005 (issued July 23, 2012).

<sup>31</sup> In view of the Board's finding that the case must be remanded for OWCP to consider waiver of the overpayment, it is premature to address the amount of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed in part with regard to the fact and amount of overpayment. The decision is set aside with regard to waiver of recovery and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 16, 2015  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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