

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

N.G., Appellant)	
)	
and)	Docket No. 15-48
)	Issued: May 22, 2015
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, Yazoo City, MS, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 7, 2014 appellant filed a timely appeal from a September 29, 2014 decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 appellant received an overpayment of compensation in the amount of \$615.52, because life and health insurance premiums were not made during the period January 15 through March 11, 2012; (2) whether it properly denied waiver of the overpayment; and (3) whether OWCP properly determined to recover the overpayment at by withholding \$615.52 from his continuing compensation payments.

¹ The record contains a September 29, 2014 schedule award decision, which is proceeding separately under Docket No. 15-864. The record also contains a September 19, 2014 decision denying modification of a loss of wage-earning capacity determination. Appellant has not appealed the September 19, 2014 decision.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on December 25, 2006 appellant, then a 32-year-old correctional officer, sustained an injury to his right elbow in the performance of duty. It accepted the claim for right elbow coronoid fractures with tears of the medial and collateral ligaments, and postoperative heterotopic calcification of the right elbow. Appellant stopped work on the date of injury, returned to work on February 11, 2007, and thereafter received total disability wage-loss compensation from May 16, 2008 to November 20, 2010. Thereafter, he received wage-loss compensation based on his wage-earning capacity.³ Deductions for the appropriate health benefits premium, basic life and optional life insurance premiums were made.

In a January 13, 2012 decision, OWCP suspended appellant's compensation, effective January 15, 2012 on the grounds that he refused to attend a second opinion examination. The record reflects that appellant's compensation was suspended for the period January 15 through March 11, 2012. Appellant's wage-loss compensation resumed, effective March 12, 2012, when he attended the rescheduled second opinion examination, on March 28, 2012.

On August 20, 2014 OWCP determined that, from January 15 to March 11, 2012, health and life insurance premiums were not recovered when appellant's compensation was reinstated following his attendance at the second opinion medical examination. It determined that an overpayment for the benefits occurred. OWCP provided a work sheet which revealed that for the period January 15 through March 11, 2012, appellant was provided with the payments for health and life insurance premiums to prevent a cancellation and break in service. It determined that health insurance premiums for January 15 through March 11, 2012 were \$536.33; basic life insurance premiums were \$37.25; and optional life insurance premiums were \$41.94. OWCP determined that appellant received benefits in the amount of \$615.52 and was responsible for this amount paid on his behalf while his compensation was suspended.

On August 22, 2014 OWCP made a preliminary finding that appellant received a \$615.52 overpayment of compensation because health and life insurance premiums were not made during the period in which his benefits were suspended. It found that he was not at fault in the creating the overpayment because he was not aware or reasonably aware that OWCP paid for the premiums while his compensation was suspended.⁴ OWCP advised appellant that the deductions for these benefits would have to be repaid from his compensation, which was restarted. It informed appellant of his right to challenge the amount of the overpayment or request a waiver of the overpayment by one of three methods including a request for a telephone conference, a request for a written review of the record, or a request for a prerecoupment hearing. If appellant wished a waiver of the overpayment, he was specifically directed to submit financial information

³ In a November 5, 2010 wage-earning capacity decision, effective November 21, 2010, OWCP reduced appellant's compensation to reflect his ability to earn wages in the selected position of radio dispatcher. On September 19, 2014 it modified the November 5, 2010 decision to reflect appellant's actual earnings as a Veterans' service representative.

⁴ OWCP actually indicated that appellant was at fault. However, this appears to be a typographical error as he was provided with the overpayment recovery questionnaire and the decision on September 29, 2014 finds him without fault.

by completing an overpayment recovery questionnaire. He was allotted 30 days to submit the requested information. Appellant did not respond.

By decision dated September 29, 2014, OWCP finalized its preliminary determination finding that appellant had received an overpayment of compensation in the amount of \$615.42, for which he was not at fault, but that he was not entitled to waiver of recovery of the overpayment. It directed that recovery would be made from appellant's continuing compensation payment. OWCP indicated that the amount of \$615.42 would be withheld from a payment on October 18, 2014.

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of FECA provides that 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.⁵

The Office of Personnel Management (OPM), rather than OWCP, has jurisdiction over the matter of health insurance deductions from compensation and enrollment under the Federal Employees' Health Benefits (FEHB) Program.⁶ OPM regulations regarding the FEHB Program provide that an employee or annuitant is responsible for payment of the employee's share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due the United States in the amount of the proper employee withholding required for that pay period.⁷ The regulations further provide that an agency that withholds less than or none of the proper health benefits contributions from an individual's pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under 5 U.S.C. § 8906 to OPM for deposit in the Employees' Health Benefits Fund.⁸ The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.⁹

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 of the options.¹⁰ The coverage for basic life insurance is effective unless waived¹¹ and

⁵ 5 U.S.C. § 8129.

⁶ See *Raymond C. Beyer*, 50 ECAB 164 (1998).

⁷ 5 C.F.R. § 890.502(b)(1).

⁸ *Id.* at § 890.502(d); see *John Skarbek*, 53 ECAB 630 (2002); *Jennifer Burch*, 48 ECAB 633 (1997).

⁹ *D.D.*, Docket No. 14-572 (issued June 9, 2014).

¹⁰ 5 U.S.C. § 8702(a).

¹¹ *Id.* at § 8702(b).

the premiums for basic and optional life coverage are withheld from the employee's pay.¹² While the employee is receiving compensation under FECA, deductions for insurance are withheld from the employee's compensation.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

The record reflects that OWCP failed to recover the health and life insurance premiums that were paid during his suspension for refusing to attend a medical appointment for the period January 15 through March 11, 2012. An overpayment occurred as his health and life insurance payments were not recovered when appellant's compensation was reinstated. OWCP provided a worksheet explaining how the overpayment was calculated for this time period. It revealed that appellant was provided with the payments for health and life insurance premiums to prevent a cancellation and break in service. OWCP determined that health insurance premiums for January 15 through March 11, 2012 were \$536.33; basic life insurance premiums were \$37.25; and optional life insurance premiums were \$41.94. The Board finds that an overpayment was created in the amount of \$615.52 due to the payment of the health and life insurance premiums while his compensation was suspended.

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.¹⁵ 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.¹⁶ When a claimant is found to be without fault in the matter of the overpayment, then, in accordance with section 8129(b), OWCP 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.¹⁷

Section 10.438 of OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. Failure to

¹² *Id.* at § 8707.

¹³ *Id.* at § 8707(b)(1).

¹⁴ *Id.* at § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁵ See *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁶ 5 U.S.C. § 8129(b).

¹⁷ *M.G.*, Docket No. 14-1917 (issued January 22, 2015).

submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

ANALYSIS -- ISSUE 2

OWCP properly determined that appellant did not establish entitlement to waiver of the overpayment under the relevant standards, as appellant failed to provide any financial information within the appropriate time period to show that he was entitled to waiver of the overpayment. He did not complete and submit the financial information questionnaire within 30 days of the August 22, 2014 preliminary overpayment notice as requested. Because appellant did not comply with section 10.438 of OWCP's regulations, he is not entitled to waiver of recovery of the \$615.52 overpayment.

LEGAL PRECEDENT -- ISSUE 3

OWCP's implementing regulations provide that, if an overpayment of compensation has been made to an individual entitled to further payments and no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.¹⁹

ANALYSIS -- ISSUE 3

As stated above, appellant did not submit an overpayment recovery questionnaire or other financial information as OWCP requested prior to the final September 29, 2014 overpayment decision. Regarding recovery of an overpayment, when an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁰ As appellant did not submit the financial information requested by OWCP, the Board finds that there is no evidence in the record to show that the recovery rate of \$615.52 from the continuing compensation payment on October 18, 2014 is unreasonable. He has not shown that OWCP improperly required withholding this amount from his continuing compensation payments.

On appeal appellant argued that he did not receive due process with regard to the overpayment. He indicated that the only notification he received was related to the wage-earning capacity decision. The Board has found that a notice properly addressed and duly mailed to an individual in the ordinary course of business is presumed to have been received by that individual.²¹ The Board notes that there is no evidence in the record that he did not receive the

¹⁸ 20 C.F.R. § 10.438.

¹⁹ *Id.* at § 10.441(a).

²⁰ *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (May 2004).

²¹ *See Newton D. Lashmett*, 45 ECAB 181 (1993).

preliminary notice which was sent to his address of record. Appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$615.52, because life and health insurance premiums were not made during a suspended period of compensation for the period January 15 through March 11, 2012. The Board also finds that OWCP properly denied waiver of the overpayment; and properly determined to recover the overpayment at the rate of \$615.52 from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2015
Washington, DC

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

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

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