

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Napa, CA, Employer**

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**Docket No. 15-1158
Issued: November 25, 2015**

Appearances:
Rita L. Donato, for the appellant
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 April 27, 2015 appellant, through his representative, filed a timely appeal of an April 16, 2015 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)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$17,117.61 for the period March 3, 1995 through February 7, 2015 for which he was not at fault; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether it properly requested repayment of the debt in full.

On appeal, appellant's representative alleged that appellant should not be held responsible for the overpayment created through OWCP's actions and that he could not afford to repay it.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 3, 1985 appellant, then a 36-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging he twisted his body to pick up a mail tray and experienced pain in his lower back on that date. He returned to part-time work on September 18, 1985 and returned to full duty on October 20, 1985. Appellant underwent L5-S1 discectomies on February 15, 1986 and May 24, 1990. He filed a notice of recurrence of disability in February 1990 and stopped work. Appellant underwent a total discectomy L4-5 and L5-S1 with fusion on September 21, 1991. He received spinal cord stimulator implants in August 1993, 1995, and June 2000. OWCP accepted appellant's claim for chronic pain syndrome, postlaminectomy syndrome, and lumbar intervertebral disc disorder with myelopathy at L4-5 and L5-S1.

On August 11, 1995 the Office of Personnel Management (OPM) had directed OWCP to withhold life insurance premiums for appellant based on the salary of \$29,249.00 effective March 3, 1995. The form, notes appellant's selecting postretirement basic life insurance with no reduction, standard optional and family optional.

By letter dated August 16, 1995, OPM notified appellant that his civil service annuity had been suspended while he was receiving compensation benefits. It stated, however, that his basic life insurance coverage would continue as long as he was receiving continuous compensation benefits due to total ongoing disability. OPM further stated that beginning the second calendar month after appellant reached age 65, the present amount of his basic life insurance (\$32,000.00) would not be reduced and that deductions would continue to be made from his compensation payments for this coverage. It also noted that deductions for his standard optional life insurance premiums would continue to be made from his compensation payments, but effective at the beginning of the second calendar month after reaching age 65, the present amount of his standard option insurance (\$10,000.00) would be reduced at 2 percent a month until it reached 25 percent of the present amount. Deductions for appellant's family optional insurance would also continue until he reached age 65, but after the second calendar month after reaching the age of 65 would be reduced by 2 percent a month for 50 months, at which time the coverage would expire.

By letter dated December 31, 2014, OPM notified appellant that he had elected to continue basic life insurance coverage at no reduction coverage. It informed him that to continue this coverage he needed to pay back the underpayment and the monthly premium amount. OPM provided appellant with an election form to select weight basic postretirement no reduction coverage or to cancel this coverage and keep the 75 percent free coverage at the reduced amount of \$9,000.00 after age 65.

Appellant's representative telephoned OWCP on February 9, 2015 to discuss whether appellant had elected postretirement basic life insurance which OWCP had not been deducting.

On February 11, 2015 OWCP completed a worksheet and determined that appellant's compensation benefits should have been reduced for these life insurance premiums by the amount of \$17,001.53 for the period March 3, 1995 through December 14, 2014 and by the amount of \$116.08 for the period December 15, 2014 through February 7, 2015 after he turned age 65. On February 18, 2015 it responded to appellant's representative's February 9, 2015 telephone call that it had received OPM's notice of appellant's selection of postretirement basic

life insurance with no reduction on September 26, 1995 and that this notification was effective on March 3, 1995. OWCP, however, had failed to deduct these life insurance premiums from appellant's compensation benefits. It informed him that beginning February 8, 2015, \$59.10 would be deducted from his ongoing compensation benefits every 28 days.

OWCP issued a preliminary determination of overpayment on February 18, 2015 finding that appellant had been overpaid benefits in the amount of \$17,117.61 because he elected postretirement basic life insurance effective March 3, 1995 but no deduction had been made until February 8, 2015. It found that he was without fault in the creation of the overpayment. OWCP asked that appellant complete an overpayment recovery questionnaire and include supporting documents to establish his income and expenses.

By decision dated April 16, 2015, OWCP finalized its determination that appellant had received an overpayment of compensation in the amount of \$17,117.61 and that he was without fault in the creation of the overpayment. It noted that he had not responded to the preliminary notice and failed to submit any financial information. OWCP found that there was no evidence that recovery would defeat the purpose of FECA or be against equity and good conscience. It concluded that appellant had not provided any justification to waive recovery of the overpayment and that the overpayment should be submitted in full within 30 days.

LEGAL PRECEDENT -- ISSUE 1

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.² When an overpayment has been made to an individual 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 the individual is entitled.³

Under FEGLI most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁴ The coverage for basic life insurance is effective unless waived⁵ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁶ These premiums are still withheld while an employee is receiving disability compensation.⁷ 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 coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *B.H.*, Docket No. 14-1846 (issued January 2, 2015); *C.B.*, Docket No. 12-87 (issued May 23, 2012).

payments.⁸ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989⁹; however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.¹⁰

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).¹¹

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.¹² 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.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.

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment in the amount of \$17,117.61 for the period March 3, 1995 through February 7, 2015.

⁸ 5 U.S.C. § 8706.

⁹ *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).

¹⁰ *Id.* at § 8707(b)(2).

¹¹ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 C.F.R. § 870.504(a)(1).

¹³ *Id.* at 504(b).

Appellant received compensation benefits from OWCP commencing March 3, 1995. While in compensation status, he remained responsible for all insurance premiums, including the premiums for postretirement basic life insurance at whatever option he had selected.¹⁴ The record does not clearly establish that appellant elected one of the postretirement life insurance benefit options which require additional premiums to be deducted. While OPM notified OWCP by form dated August 11, 1995 that appellant had elected basic life insurance coverage at no reduction, 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, it 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 *J.L.* case,¹⁷ the Board remanded the case to OWCP for further development because the evidence had not established the basis for the optional postretirement life insurance premiums because the signed form was not in the record. As the instant case does not include a signed form establishing that appellant selected optional postretirement life insurance premiums, the case must be returned to OWCP.

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 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 in the amount of \$17,117.61 because it failed to deduct premiums for the optional postretirement basic life insurance from March 3, 1995 through February 7, 2015.

¹⁴ *Id.* at § 8102(a).

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. 14-1094 (issued June 25, 2015).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this opinion of the Board.

Issued: November 25, 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