

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Omaha, NE, Employer**

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**Docket No. 15-1282
Issued: October 1, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 18, 2015 appellant timely appealed the May 8, 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) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,117.74 for the period June 16, 2002 through March 19, 2005; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly recovered the overpayment from appellant's continuing compensation payments.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The case record provided to the Board includes evidence received after OWCP issued its May 8, 2015 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

FACTUAL HISTORY

Appellant, a 45-year-old former motor vehicle operator, injured his right upper extremity in the performance of duty on October 29, 1973. OWCP accepted his traumatic injury claim for strains of the right shoulder, wrist, and hand, as well as a right hand deformity. From June 16, 2002 through December 20, 2008, it deducted basic life insurance (BLI) premiums from appellant's 28-day periodic roll payments.³

In November 2009, OWCP refunded \$379.32 for BLI deductions withheld for the period June 16, 2002 through December 20, 2008.⁴ It explained that there was no cost for BLI coverage because appellant's injury occurred prior to January 1, 1990.

Several years later, OWCP made another BLI refund in the amount of \$218.74. In an October 9, 2014 letter, it explained that it had erroneously deducted BLI premiums for the period March 20, 2005 through December 20, 2008. OWCP attributed the BLI withholding to a computer error. Appellant received the \$218.74 BLI refund *via* direct deposit on October 24, 2014.

On February 5, 2015 OWCP issued a preliminary determination of overpayment in the amount of \$1,117.74 for the period June 16, 2002 through March 19, 2005. It explained that appellant was entitled to a \$379.32 refund for BLI premiums mistakenly withheld from his compensation during the period June 16, 2002 through December 20, 2008. However, OWCP claimed to have made five separate and additional BLI refunds to appellant totaling \$1,497.06, which resulted in an overpayment of \$1,117.74. It also made a preliminary finding that appellant was without fault in creating the overpayment.

On February 16, 2015 appellant acknowledged having recently received a refund in the amount of \$218.74, but claimed to have been unaware of the other reported payments.

By decision dated May 8, 2015, OWCP finalized its preliminary overpayment determination and informed appellant that it could not consider a waiver of recovery because he had not submitted a Form OWCP-20. Also, it advised appellant that it would deduct the \$1,117.74 overpayment from future compensation payments.⁵

LEGAL PRECEDENT -- ISSUE 1

If an employee was enrolled in a Federal Employees' Health Benefit Plan and/or Federal Employees' Group Life Insurance plan at the time he became eligible to receive wage-loss

³ The record indicates that, beginning June 16, 2002, the BLI premiums were \$4.34 per 28-day periodic payment cycle. Beginning January 22, 2006, the BLI premium increased to \$4.50 per 28-day cycle. OWCP continued to deduct BLI premiums through December 20, 2008.

⁴ OWCP calculated the refund by multiplying the number of 28-day periodic payment cycles (June 16, 2002 through December 20, 2008) by the corresponding BLI premiums. *See supra* note 3.

⁵ The May 8, 2015 decision did not indicate an amount to be withheld, however, beginning May 30, 2015, OWCP deducted \$111.00 from appellant's 28-day periodic roll payments.

compensation, deductions for health benefits insurance and/or life insurance premiums will be withheld from the employee's compensation benefits.⁶ Premiums for basic life insurance and/or optional life insurance are withheld until the injured employee reaches age 65.⁷ There is no charge for BLI coverage in cases with a date of injury prior to January 1, 1990.⁸

ANALYSIS -- ISSUE 1

The record indicates that OWCP mistakenly withheld BLI premiums for the period June 16, 2002 through December 20, 2008. In November 2009 it refunded \$379.32 to appellant to restore the erroneous deductions. In October 2014, OWCP made another "BLI adjustment" of \$218.74 for the period March 20, 2005 through December 20, 2008. This second payment duplicated part of the November 2009 BLI refund and, therefore, created an overpayment of (\$218.74) for the period March 20, 2005 through December 20, 2008.

Aside from the overpayment identified in the proceeding paragraphs, OWCP sought to recover three additional payments also made in October 2014 totaling \$899.00. However, it had not disbursed these funds to appellant. The record indicates that the payments (\$611.00, \$169.20, and \$118.80) went to other individuals unrelated to this claim. Accordingly, the Board finds the May 8, 2015 decision is modified to reflect only the overpayment of \$218.74 for the period March 20, 2005 through December 20, 2008.

LEGAL PRECEDENT -- ISSUE 2

An individual who is without fault in creating or accepting an overpayment is nonetheless subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁹ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a current or former beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁰ Additionally, 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 in attempting to repay the debt or when an individual, in reliance on such payment or on

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15 (February 2013).

⁷ *Id.* at Chapter 2.901.15c(1) and (2).

⁸ *Id.* at Chapter 2.901.15c(1).

⁹ 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

¹⁰ 20 C.F.R. § 10.436(a), (b). For an individual with no eligible dependents the asset base is \$4,800.00. The base increases to \$8,000.00 for an individual with a spouse or one dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

notice that such payments would be made, relinquished a valuable right or changed his position for the worse.¹¹

The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.¹² This information is necessary for determining whether a waiver of recovery of the overpayment is warranted.¹³ The information is also used to determine an appropriate repayment schedule, if necessary.¹⁴ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁵

ANALYSIS -- ISSUE 2

OWCP determined that appellant was without fault in creating the overpayment, a finding the Board will not disturb. Although he was without fault and requested waiver of recovery, appellant did not submit an overpayment recovery questionnaire as instructed. The requested information is necessary to determine whether waiver of recovery is appropriate. In the absence of such information, OWCP was not in a position to consider a waiver of recovery.

LEGAL PRECEDENT -- ISSUE 3

When an overpayment has been made to an individual who is entitled to further payments, 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.¹⁶

ANALYSIS -- ISSUE 3

OWCP advised appellant that it would deduct the overpayment from future compensation payments. Although the May 8, 2015 decision did not specify the amount to be deducted, the record indicates that OWCP began deducting \$111.00 every 28 days. The Board finds that OWCP's decision to deduct \$111.00 every 28 days is appropriate and further notes that the \$218.74 overpayment has been repaid in full.

CONCLUSION

The Board finds that appellant received an overpayment of \$218.74 for the period March 20, 2005 through December 20, 2008. OWCP's May 8, 2015 decision shall be modified to reflect the above-noted finding. The Board further finds that OWCP properly denied waiver

¹¹ *Id.* at § 10.437(a), (b).

¹² *Id.* at § 10.438(a).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at § 10.438(b).

¹⁶ *Id.* at § 10.441(a).

of recovery of the overpayment, and reasonably withheld \$111.00 from appellant's continuing compensation.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 1, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ Between May 30 and August 22, 2015, OWCP deducted a total of \$444.00 from appellant's continuing compensation, which exceeds the amount of the overpayment. Accordingly, appellant is entitled to a refund of all deductions in excess of the \$218.74 overpayment.