

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

S.K., Appellant)	
)	
and)	Docket No. 15-0511
)	Issued: September 9, 2015
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer)	
)	

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 December 30, 2014 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated December 18, 2014. 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 this case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment in the amount of \$2,775.32 from July 2, 2011 to May 4, 2013; (2) whether it abused its discretion in denying waiver of the overpayment; (3) whether OWCP properly directed recovery of the overpayment by deducting \$184.62 from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 41-year-old distribution clerk, filed a Form CA-1 claim for benefits based on traumatic injury on February 16, 2010 alleging that she injured her right elbow due to repetitive pushing and pulling of mail. She filed a claim for benefits, which OWCP adjudicated as an occupational disease claim and accepted for lateral epicondylitis of the right elbow. Appellant underwent right elbow surgery on July 6, 2010. She has not returned to work since that date. OWCP paid her compensation for temporary total disability compensation as of July 6, 2010.

On October 26, 2010 OWCP advised appellant of her periodic rolls compensation benefits. The amount to be deducted for insurance benefits was noted. Postretirement basic life insurance was noted to be deducted in the amount of \$0.00. Appellant was advised that if she had optional life insurance coverage and no deduction was shown, she should contact OWCP immediately.

In an April 16, 2013 letter from the Office of Personnel Management (OPM) to OWCP, it was indicated that as a compensation appellant was eligible to continue the Federal Employees' Group Life Insurance (FEGLI) coverage with basic insurance code Y1 (Option B, 5 times salary, no reduction and Option C family, 1 no reduction multiple). It was also noted that she had elected postretirement, no reduction beginning July 2, 2011.

On May 28, 2013 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$2,775.32 from July 2, 2011 to May 4, 2013. It noted that the overpayment had occurred because the appropriate life insurance premiums had not been deducted from her continuing compensation payments during that period. OWCP advised that OPM's April 16, 2013 letter indicated that appellant's premiums were not being correctly collected for optional life insurance postretirement, no reduction, commencing July 2, 2011. As a result of this error, appellant had been overpaid for the period July 2, 2011 through May 4, 2013 in the amount of \$2,775.32.

In an OWCP pay rate worksheet accompanying the notice of overpayment, the amount of the overpayment was calculated based on the life insurance premiums not being deducted from her monthly compensation checks from July 2, 2011 to May 4, 2013. It calculated the overpayment by taking the amount she was paid compensation during this period, \$69,914.43, and subtracting this from the correct amount of compensation which she should have been paid, \$67,139.11, for a total overpayment of \$2,775.32. OWCP further advised appellant that she had been found without fault in the creation of the overpayment. It advised her that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention or request a prerecoupment hearing. OWCP further advised appellant that, when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the law or would be against equity and good conscience.

On June 6, 2013 appellant requested a prerecoupment hearing and completed the Form OWCP-20. She stated that she had a total monthly household income of \$2,775.32, plus a social security check in the amount of \$877.00, which amounted to \$3,641.64, and monthly expenses totaling \$3,429.00. Appellant, however, did not submit complete documentation supporting these totals. She requested a prerecoupment hearing for the overpayment, which was held on November 13, 2014. At the hearing appellant was advised that she needed to submit additional

documentation from her two most recent billing cycles to confirm her stated expenses in order to obtain a waiver of the overpayment. The hearing representative afforded her 30 days to submit this additional information. Appellant did not submit any additional information within the allotted 30 days.

By letters dated September 17 and October 9, 2014, appellant was advised by OWCP that postretirement basic life insurance benefits had been inadvertently overdeducted after January 2012, resulting in an underpayment of compensation benefits in the amount of \$285.60.

In a decision dated December 18, 2014, an OWCP hearing representative finalized the preliminary determination regarding the overpayment of \$2,775.32 for the period July 2, 2011 through May 4, 2013. He stated that on April 16, 2013 OPM had informed OWCP that appellant was enrolled in FEGLI, with no reduction in postretirement benefits. OWCP was to begin withholding premiums for this coverage effective July 2, 2011, but it was unaware of the postretirement coverage and therefore under withheld that component of the premium.

OWCP hearing representative further found that appellant was not eligible for waiver of the overpayment, as she had failed to submit the required, requested documentation to support her stated income and expenses. He directed recovery of the overpayment by finding that a monthly repayment of \$200.00 was appropriate, an amount he found which would not cause hardship based on her available monthly income. The hearing representative advised that conversion of this monthly figure to a 28-day cycle resulted in a periodic withholding of \$184.62.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance with one or more options. The coverage for basic life is effective unless waived and premiums for basic and optional life coverage are withheld from the employees' pay. With certain restrictions, insurance benefits continue postretirement. Insurance remains in effect until canceled and premiums due are to be deducted from the injured employees' compensation payments.² When FEGLI premiums, including postretirement insurance premiums are incorrectly withheld, the entire amount of the unpaid premium is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.³

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from her compensation, so that her 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

² 5 C.F.R. §§ 870-73.

³ See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

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).⁴

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, she filed an election or waiver that remains in effect. Any employee who does not file a Life Insurance Election with 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.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

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$2,775.32 for the period July 2, 2011 to May 4, 2013.

Appellant has received compensation benefits from OWCP since July 6, 2010. While in compensation status, she remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance at whatever option appellant had selected.

While OPM notified OWCP by letter dated April 16, 2013 that appellant had elected the postretirement, no reduction option beginning July 2, 2011, it did not provide documentation of that election. In this case, the hearing representative simply relied on a statement from OPM and placed the burden on appellant to disprove the fact of the overpayment.

In the *N.J.* case,⁷ the Board remanded the case to OWCP for further development because the evidence was unclear as to why postretirement optional life insurance premiums had been deducted as of a certain date. Similarly in this case the evidence fails to establish the basis for the optional postretirement life insurance premiums for the no reduction option as the signed election form is not in the record. The Board notes in this regard that when OWCP advised appellant of her periodic rolls compensation benefits on October 26, 2010, it was noted that postretirement basic life insurance premiums were being deducted in the amount of \$0.00. Appellant was advised that she should contact OWCP immediately if she did have optional life insurance coverage. The record does not reflect that appellant ever advised OWCP that she did in fact have optional postretirement life insurance coverage. It is unclear from the record why OPM advised OWCP that these optional life insurance premiums should have been collected as of July 2, 2011.

⁴ See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁵ See *J.L.*, Docket No. 14-1094 (issued June 25, 2015).

⁶ *Id.*

⁷ Docket No. 13-2164 (issued April 18, 2014).

Appellant would be responsible for the additional cost associated with her 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.⁸ 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.⁹

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment in the amount of \$2,775.32 for the period July 2, 2011 to May 4, 2013.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 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

⁸ *Supra* note 5.

⁹ If OWCP verifies the fact of overpayment, it should further review the calculation of the overpayment, given that these premiums were previously over deducted, as noted in OWCP's letters of September 17 and October 9, 2014.

¹⁰ In view of the Board's finding that the case is not in posture for decision regarding whether appellant received an overpayment of compensation, it is premature to address the issues of waiver and recovery.