



## ISSUES

The issues are: (1) whether appellant received an overpayment in the amount of \$611.00 for the period February 20, 2005 to December 20, 2008, for which he was not at fault; (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments.

## FACTUAL HISTORY

OWCP accepted that on August 6, 1976 appellant, then a 46-year-old biological technician, sustained a left knee injury when his knee gave way while he was moving bee hives at work. He stopped work on August 9, 1976 and returned to work on August 10, 1976. Appellant's claim was accepted for left knee lateral meniscus tear. On November 10, 1976 he underwent authorized left knee surgery and stopped work. On January 10, 1977 appellant returned to modified duty.

OWCP granted appellant a schedule award for 17 percent permanent impairment of his left leg. The award ran from January 5 to December 13, 1978. Appellant received an additional award of 17 percent impairment, which ran from November 16, 1991 to October 23, 1992.

OWCP also accepted that on August 6, 1982 and May 10, 1989 appellant sustained recurrences of disability of the August 6, 1976 injury. He underwent authorized left knee surgery on September 28, 1989 and stopped work.

In a letter dated October 5, 1992, appellant requested continued disability compensation. On June 9, 1993 OWCP placed him on the periodic rolls.

On July 3, 1996 OWCP reduced appellant's compensation, effective July 21, 1996 based on his capacity to earn wages as a fishing lure assembler.

The record substantiates that on March 26, 2009 OWCP provided a print-out of appellant's payment history for the period August 6, 1976 to March 26, 2009. The print-out reflected that premiums were deducted for life insurance.

By letter dated October 29, 2009, OWCP advised appellant that his basic life insurance (BLI) was updated in its records. It notified him that he was due a reimbursement of \$2,395.12 for the period June 26, 1994 to December 20, 2008 because BLI was at no cost for injuries prior to 1990. A fiscal payment worksheet indicated that beginning June 26, 1994 BLI premiums of \$12.22 were withheld per 28-day periodic payment cycle. OWCP calculated the refund by multiplying 196 (the number of 28-day periodic payment cycles from June 26, 1994 to December 20, 2008) by \$12.22 for a total of \$2,395.12. On October 30, 2009 it refunded appellant \$2,395.12 *via* direct deposit for BLI premiums from June 26, 1994 to December 20, 2008.

By letter dated October 9, 2014, OWCP informed appellant that BLI premiums were erroneously deducted from his compensation payments for the period February 20, 2005 to December 20, 2008. It explained that since his date of injury was prior to January 1, 1990 he

should have received BLI at no cost and no premiums should have been deducted from his benefit payment. OWCP noted that the over deduction of premiums caused an underpayment of compensation benefits for the period February 20, 2005 to December 20, 2008 in the amount of \$611.00. On November 5, 2014 it refunded appellant a lump sum of \$611.00 *via* direct deposit.

In a letter dated March 18, 2015, OWCP advised appellant of its preliminary finding that an overpayment of \$611.00 of compensation was created for the period February 20, 2005 to December 20, 2008, for which he was not at fault. In an accompanying memorandum, it explained that he was reimbursed twice for BLI premiums for the period February 20, 2005 to December 20, 2008. OWCP noted that appellant was previously reimbursed \$2,395.12 on October 30, 2009 for BLI premiums covering the period June 26, 1994 to December 20, 2008. It indicated that he was again reimbursed \$611.00 on November 5, 2014 for BLI premiums covering the period February 20, 2005 to December 20, 2008. Because appellant was already reimbursed for the period February 20, 2005 to December 20, 2008, OWCP determined that an overpayment in the amount of \$611.00 had occurred.

In its March 18, 2015 notice, OWCP advised appellant that he could submit evidence challenging the fact, amount, or finding of fault and request waiver of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. OWCP notified appellant that he had 30 days to request a telephone conference, a final decision based on the written evidence, or a preresumption hearing. No additional evidence from appellant was received.

On June 26, 2015 OWCP finalized that appellant received an overpayment of compensation in the amount of \$611.00 for the period February 20, 2005 to December 20, 2008. It found that he was not at fault in the creation of the overpayment, but was not eligible for waiver of recovery of the overpayment because he had not submitted the requested financial information to allow OWCP to consider waiver of recovery. OWCP determined that it would deduct \$50.00 from appellant's ongoing compensation payments until the overpayment was satisfied.

### **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 duty.<sup>3</sup> Under Federal Employees Health Benefit Plan (FEHB) and/or Federal Employees Group Life Insurance (FEGLI) plan, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.<sup>4</sup> If an employee was enrolled in a FEGLI plan at the time he became eligible to receive wage-loss compensation, deductions for health benefits insurance and/or life insurance premiums will be withheld from the employee's compensation benefits.<sup>5</sup> Premiums for BLI and/or optional life insurance are

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8702(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15 (February 2013).

withheld until the injured employee reaches age 65.<sup>6</sup> There is no charge for BLI coverage in cases with a date of injury prior to January 1, 1990.<sup>7</sup>

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

The record reveals that OWCP erroneously withheld BLI premiums for the period June 26, 1994 through December 20, 2008. On October 30, 2009 OWCP refunded \$2,395.12 to appellant *via* direct deposit for the erroneous deductions. Several years later it made another BLI adjustment of \$611.00 for the period February 20, 2005 through December 20, 2008 and refunded appellant a lump sum of \$611.00 *via* direct deposit. OWCP determined that this second payment duplicated part of the October 2009 BLI refund and, therefore, created an overpayment of \$611.00 for the period February 20, 2005 through December 20, 2008. The Board finds that the receipt of these two reimbursements for the same time period caused an overpayment of compensation in the amount of \$611.00.<sup>8</sup> The Board will affirm OWCP's June 26, 2015 decision on the issue of fact and amount of the overpayment.

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

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>9</sup> 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>10</sup> 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.

Section 10.438 of OWCP regulations provide:

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 FECA or be against equity and good conscience. The information will also be used to determine the repayment schedule, if necessary.

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<sup>6</sup> *Id.* at Chapter 2.901.15c(1) and (2).

<sup>7</sup> *Id.* at Chapter 2.901.15c(1).

<sup>8</sup> *See J.W.*, Docket No. 15-1282 (issued October 1, 2015).

<sup>9</sup> 5 U.S.C. § 8129(b).

<sup>10</sup> *See Robert Atchison*, 41 ECAB 83, 87 (1989).

Failure to 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.<sup>11</sup>

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

OWCP found that as appellant was not at fault in the creation of the overpayment, he was eligible for consideration of waiver. In its March 18, 2015 notice of overpayment, it requested that he provide financial information and submit an overpayment recovery questionnaire within 30 days of the preliminary overpayment notification. The Board notes that the notice of overpayment was sent to his proper address of record. Appellant, however, did not provide the requested financial information nor did he complete an overpayment recovery questionnaire or provide supporting financial documents within the appropriate time period to allow OWCP to consider waiver of recovery of the overpayment. Because he did not submit the necessary financial information, OWCP had no basis to find that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, as required by regulation.<sup>12</sup> Therefore, the Board finds that OWCP properly denied waiver of recovery of the \$611.00 overpayment of compensation<sup>13</sup>

On appeal, appellant asserts that the \$611.00 overpayment should be waived because he was not at fault in the creation of the overpayment and recovery would be against equity and good conscience. As noted above, however, OWCP properly denied waiver of recovery of the compensation because he failed to submit the requested financial information supporting such waiver.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of Title 20 of the Code of Federal Regulations provides in pertinent part:

When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his attention is called to the same. If 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.<sup>14</sup>

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<sup>11</sup> 20 C.F.R. § 10.438.

<sup>12</sup> *Supra* note 11.

<sup>13</sup> *See M.S.*, Docket No. 15-1874 (issued January 6, 2016); *R.N.*, Docket No. 09-1882 (issued April 16, 2010).

<sup>14</sup> 20 C.F.R. § 10.441(a); *see Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

### **ANALYSIS -- ISSUE 3**

OWCP determined that the overpayment should be recovered from appellant's continuing compensation payments by deducting \$50.00 every 28 days. The Board finds that OWCP did not abuse its discretion and took into consideration the factors set forth in section 10.441. OWCP followed collection guidelines by requiring installments large enough to collect the debt promptly and minimizing any resulting hardship on appellant.<sup>15</sup> The Board will affirm OWCP's determination regarding rate of recovery.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$611.00 for the period February 20, 2005 through December 20, 2008. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and reasonably withheld \$50.00 from appellant's continuing compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2016  
Washington, DC

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

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

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

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<sup>15</sup> Appellant was receiving compensation payments of approximately \$1,616.94 every 28 days at the time the June 26, 2015 decision was issued. The debt would be paid in full on June 13, 2016.