



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 20, 2011 appellant, then a 47-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury to his left leg as a result of duties of his federal employment as of May 4, 2011. On August 25, 2011 OWCP accepted his claim for thoracic or lumbosacral neuritis or radiculitis, left internal derangement of the knee, and left contusion of the lower leg. He received wage-loss compensation on the periodic rolls from August 30, 2012 to March 8, 2014. Appellant returned to part-time modified work on March 3, 2014 and then received compensation on the supplemental rolls based on his partial disability. She filed claims for compensation (Form CA-7). By decisions dated July 21, 2014, OWCP denied appellant's claims for total disability compensation on March 27, 2014 and for periods of total disability after April 1, 2014. On October 14, 2014 appellant appealed to the Board. In a March 13, 2015 decision, the Board found that OWCP had properly denied appellant's claims for total disability compensation for March 27, 2014 and subsequent to April 1, 2014.<sup>3</sup>

In a financial worksheet dated March 11, 2015, an OWCP representative calculated what appellant owed for the unpaid health and life insurance premiums for the period April 1, 2014 through February 27, 2015. He calculated that appellant owed \$3,414.92 in deductions for health insurance premiums for the following periods: April 1 through 5, 2014; April 6, 2014 through January 10, 2015; January 11 through February 7, 2015; and February 8 through 27, 2015. The representative additionally calculated that appellant owed \$210.45 for life insurance premiums for the following periods: April 1 through 5, 2014; April 6, 2014 through February 7, 2015; and February 8 through 27, 2015.

On March 18, 2015 OWCP advised appellant that a preliminary determination that he had been overpaid in the amount of \$3,625.37 for the period April 1, 2014 through February 27, 2015 because it had failed to deduct health benefits or basic life insurance premiums for that period. It also made the preliminary determination that appellant was without fault in the creation of the overpayment because appellant was not aware nor could he reasonably be expected to know that OWCP had paid compensation incorrectly. OWCP provided appellant 30 days to challenge the proposed overpayment, request a telephonic conference, and to submit financial information.

On March 22, 2015 appellant requested a preresoupment hearing before an OWCP hearing representative on the issue of his overpayment. He stated that the overpayment was not his fault, and noted that he also disagreed that the overpayment occurred and with its amount.

With his request, appellant completed an overpayment recovery questionnaire (Form OWCP-20), which noted no monthly income, along with a rent payment of \$723.00 per month; food costs of \$400.00 per month; clothing costs of \$300.00 per month; utility expenses of \$500.00 per month; loan expenses of \$75.00 per month; and other expenses of \$727.00 per

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<sup>2</sup> Docket No. 15-0071 (issued March 13, 2015).

<sup>3</sup> *Id.*

month. He claimed no cash on hand, no savings account balance, no current value of stocks or bonds, no value of personal property, and \$500.00 of debt to his checking account balance. Appellant also claimed that OWCP had underpaid him.<sup>4</sup>

The hearing was held on October 16, 2015. Appellant noted to the hearing representative that he had retirement income of roughly \$1,400.00 per month. He noted that he had two teenage daughters who did not work and attended school. Appellant verified that he had rent of \$723.00 per month, with utilities of \$90.00 to \$100.00 per month. He noted that he spent roughly \$400.00 per month on food and nothing on clothing. Appellant speculated that he might have a Thrift Savings Plan, but that he had not used it. The hearing representative explained that he would send another financial information form for appellant to complete.

On November 11, 2015 appellant submitted a corrected overpayment recovery questionnaire, noting monthly income from social security benefits of \$1,954.00 and benefits from OPM of \$990.88. He recorded no other sources of income. Appellant noted monthly costs of \$566.75 in rent, \$500.00 in food, \$200.00 in clothing, \$429.00 in utilities, and other expenses of \$887.00 per month. He also noted an extra \$50.00 per month under “other expenses” and \$150.00 per month for “necessities.” Appellant noted that he had no funds whatsoever other than \$2.00 in his checking account.

By decision dated January 11, 2016, OWCP finalized the preliminary determination and found that appellant received a \$3,625.37 overpayment of compensation. It found that appellant was without fault in the creation of the overpayment, but that he was not eligible for waiver of recovery, as the figure reported established that appellant retained at least \$300.00 to \$400.00 per month after paying his monthly living expenses. OWCP noted that, while appellant had reported \$1,954.20 per month from social security benefits, the statement he provided from social security indicated that his monthly payment would be \$2,107.00 each month after September 23, 2015. It found that his monthly income was \$2,107.00 in social security benefits plus \$990.88 from OPM retirement benefits, for a total of \$3,097.88 in monthly income. OWCP found that his monthly expenses included \$566.75 in rent, \$500.00 in food, \$200.00 in clothing, \$429.00 in utilities, and \$887.00 in other expenses, for a total of \$2,582.75 in monthly expenses. It found that the overpayment should be repaid through payments of \$200.00 every 28 days based on these figures.

### **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 his or her duty.<sup>5</sup> 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.<sup>6</sup>

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<sup>4</sup> Appellant elected Office of Personnel Management (OPM) retirement benefits as of June 29, 2015.

<sup>5</sup> *Id.* at § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

Under Federal Employees' Group Life Insurance, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options. When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.<sup>7</sup>

The Board has similarly 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.<sup>8</sup>

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

The record reflects that OWCP failed to recover the health and life insurance premiums for the period April 1, 2014 through February 27, 2015. An overpayment occurred due to the nonrecovery of these health and life insurance premiums. OWCP provided a worksheet explaining how the overpayment was calculated for this time period. It calculated that appellant owed \$3,414.92 in deductions for health insurance premiums for the following periods: April 1 through 5, 2014; April 6, 2014 through January 10, 2015; January 11 through February 7, 2015; and February 8 through 27, 2015. OWCP further calculated that the government owed \$10,245.35 for the same period. It additionally calculated that appellant owed \$210.45 for life insurance premiums for the following periods: April 1 through 5, 2014; April 6, 2014 through February 7, 2015; and February 8 through 27, 2015. The amount of the overpayment was, therefore, \$3,414.92 in health insurance premiums and \$210.45 in life insurance premiums, for a total of \$3,625.37.

The Board finds that an overpayment of compensation was created in the amount of \$3,625.37 due to underwithholding of health insurance and life insurance premiums.

### **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.<sup>9</sup> 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.<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.<sup>11</sup>

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<sup>7</sup> See *J.H.*, Docket No. 15-1385 (issued October 27, 2015).

<sup>8</sup> *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>9</sup> See *Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>10</sup> 5 U.S.C. § 8129(b).

<sup>11</sup> *M.G.*, Docket No. 14-1917 (issued January 22, 2015).

Section 10.438 of OWCP's regulations provides 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 FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary. 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>12</sup>

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

OWCP found appellant to be without fault in creating the overpayment. The issue is whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP provided appellant with an OWCP-20 form and requested in the March 18, 2015 preliminary determination that he submit supporting financial documentation with respect to his monthly income and expenses. Appellant was notified of the provisions of 20 C.F.R. § 10.438.

Appellant provided a corrected overpayment recovery questionnaire on November 11, 2015 and clarified his financial situation at the prerecoupment hearing. Based on his testimony and information from the overpayment recovery questionnaire, OWCP's hearing representative found that appellant had monthly income of \$3,097.88 and monthly expenses of \$2,582.75, for a total monthly surplus of \$515.13. As such, the hearing representative found that appellant had sufficient surplus monthly income remaining to pay the overpayment and denied waiver.

The Board finds that OWCP properly denied waiver. OWCP did not abuse its discretion in finding that recovery of the overpayment would not defeat the purpose of FECA or be against equity and good conscience.<sup>13</sup> Pursuant to 20 C.F.R. §§ 10.436 and 10.438, it may properly deny waiver of the overpayment. For this reason, OWCP properly denied waiver in conformance with the implementing federal regulations.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$3,625.37 for which he was not at fault. The Board further finds that OWCP properly denied waiver of recovery.

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<sup>12</sup> 20 C.F.R. § 10.438.

<sup>13</sup> See *D.I.*, Docket No. 13-469 (issued July 1, 2013). See also *N.R.*, Docket No. 12-1853 (issued June 10, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board