

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

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**G.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 16-0042  
Issued: July 15, 2016**

*Appearances:*

*Jai L. Collier, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 13, 2015 appellant, through her representative, filed a timely appeal from an April 15, 2015 merit decision and a May 11, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant submitted evidence on appeal provided after OWCP's last decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,237.60 for the period July 21, 2012 to January 10, 2015 because OWCP failed to deduct premiums for postretirement basic life insurance (PRBLI); (2) whether it properly denied waiver of recovery of the overpayment; (3) whether OWCP properly determined that it would recover the overpayment by deducting \$200.00 from continuing compensation payments; and (4) whether OWCP properly denied appellant's request for a prerecougment hearing.

## **FACTUAL HISTORY**

OWCP accepted that on September 16, 1999 appellant, then a 40-year-old distribution clerk, sustained an acute stress reaction after being trapped in an elevator. She stopped work on September 17, 1999 and experienced intermittent periods of disability until December 13, 1999, when she returned to limited-duty work for six hours per day. Appellant stopped work on April 2, 2009 and did not return.<sup>4</sup>

OWCP placed appellant on the periodic rolls effective April 2, 2009. It did not deduct premiums for PRBLI.<sup>5</sup>

By letter dated October 6, 2014, the Office of Personnel Management (OPM) advised OWCP that appellant had elected PRBLI with no reduction for an annuity commencing July 21, 2012. It further advised that her final base salary was \$53,102.00.

Beginning January 11, 2015, OWCP deducted PRBLI from appellant's continuing compensation.

On February 17, 2015 OWCP determined that it should have deducted \$100.28 every 28 days, or \$3.58 per day, from appellant's compensation benefits for PRBLI. It found that she owed \$28.64 for the eight days from July 21 to 28, 2012 and \$3,208.96 for the period July 29, 2012 to January 10, 2015, for a total overpayment of \$3,237.60.

On March 3, 2015 OWCP notified appellant of its preliminary determination that she received a \$3,237.60 overpayment of compensation for the period July 21, 2012 through

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<sup>4</sup> By decision dated October 31, 2002, OWCP found that appellant had not established that she was disabled from July 13, 2001 to May 7, 2002 due to the accepted condition of contusion of the right leg and excision of hematoma/cyst sustained on October 31, 1995 in File No. xxxxxx659. This claim was combined with the current claim, File No. xxxxxx647, which serves as the master file. In a decision dated May 5, 2004, OWCP denied her claim for compensation for intermittent disability from February 15, 2000 to September 16, 2003, and on August 16, 2004 denied her request for an oral hearing as untimely. In a decision dated August 26, 2009, it denied appellant's claim for compensation from September 22, 2008 to February 7, 2009.

<sup>5</sup> In a decision dated October 29, 2013, OWCP found that appellant received an overpayment of compensation in the amount of \$655.71 for the period July 5 through August 24, 2013, because it paid her compensation at the augmented rate when she did not have a dependent. It found that she was at fault in creating the overpayment.

January 10, 2015 because it failed to deduct premiums for PRBLI with no reduction.<sup>6</sup> It further notified appellant that she was without fault in the creation of the overpayment and requested that she complete the enclosed Form OWCP-20 overpayment recovery questionnaire and submit supporting financial documents so that it could determine whether she was entitled to waiver or set a collection method. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupe hearing.

In an April 7, 2015 telephone call, appellant told OWCP that she did not receive the March 3, 2015 preliminary determination of overpayment. The claims examiner “verified her address and placed another copy in the mail to her.” On April 14, 2015 OWCP advised appellant that it was deducting PRBLI in accordance with a letter from OPM.

By decision dated April 15, 2015, OWCP determined that appellant received an overpayment of compensation in the amount of \$3,237.60 because it failed to deduct premiums for PRBLI from July 21, 2012 through January 10, 2015. It further found that she was not at fault in the creation of the overpayment, but denied waiver of recovery, noting that she had not responded to the preliminary overpayment determination. OWCP found that it would recover the overpayment by deducting \$200.00 from appellant’s continuing compensation payments.

In a letter dated April 15, 2015, postmarked to the Branch of Hearings and Review on April 17, 2015, appellant asserted that she did not timely receive the preliminary overpayment determination and requested 30 days to respond. She submitted a blank overpayment recovery questionnaire with her correspondence.

By letter dated April 20, 2015, OWCP informed appellant that it would provide her with the opportunity to review the overpayment determination. It indicated that it would not collect the overpayment until she had 30 days to review the determination and submit a Form OWCP-20 with supporting documentation.

In a decision dated May 11, 2015, OWCP denied appellant’s request for a prerecoupe hearing as it was made after the final overpayment decision and thus not subject to a hearing under 5 U.S.C. § 8124(b).

On appeal appellant’s representative contends that appellant did not receive the March 3, 2015 preliminary determination of overpayment until it was resent with a postmark dated April 7, 2015. She contacted OWCP and learned that it had already issued a final decision. OWCP told appellant that it would grant her an additional 30 days to request waiver and submit supporting documentation. Appellant submitted the requested information on April 20, 2015. Her representative argues that OWCP should allow waiver of the overpayment as recovery would defeat the purpose of FECA and create undue hardship. He contends that appellant’s information submitted regarding waiver should be considered on appeal as she sent it in within

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<sup>6</sup> OWCP indicated that appellant owed \$28.64 for the period July 21 through 28, 2012 for basic life insurance premiums based on an inaccurate annual salary rather than for PRBLI deductions. However, as its February 17, 2015 worksheet makes apparent, she owed \$28.64 because it did not deduct premiums for PRBLI from July 21 through 28, 2012.

the extension of time granted by OWCP and as she did not timely receive the preliminary notice of overpayment.

### **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.<sup>7</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>8</sup>

Under the Federal Employees' Group Life Insurance Program (FEGLI), most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>9</sup> The coverage for basic life insurance is effective unless waived<sup>10</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>11</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensationer" status. If the compensationer chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from her compensation payments.<sup>12</sup> When an underwithholding 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.<sup>13</sup>

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 1 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).<sup>14</sup>

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<sup>7</sup> 5 U.S.C. § 8102(a).

<sup>8</sup> *Id.* at § 8129(a).

<sup>9</sup> *Id.* at § 8702(a).

<sup>10</sup> *Id.* at § 8702(b).

<sup>11</sup> *Id.* at § 8707.

<sup>12</sup> *Id.* at § 8706(b).

<sup>13</sup> 5 U.S.C. § 8707(d); see *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>14</sup> See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

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.<sup>15</sup> Any employee who does not file a life insurance election form 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.<sup>16</sup> 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.<sup>17</sup>

### **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 \$3,237.60 for the period July 21, 2012 to January 10, 2015 because OWCP failed to deduct premiums for PRBLI with no reduction.

Appellant received compensation from OWCP beginning April 2, 2009. On October 6, 2014 OPM informed OWCP that she elected PRBLI with no reduction beginning July 21, 2012 and that her annual salary for life insurance purposes was \$53,102.00. While in compensationer status, appellant remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance.<sup>18</sup> The record, however, does not contain any documentation establishing that she elected PRBLI at no reduction. OWCP did not provide any worksheet or other form showing her election. The Board has held that OWCP must document whether and when appellant elected life insurance coverage after retirement.<sup>19</sup>

In *N.J.*<sup>20</sup> the Board remanded the case to OWCP for further development because the evidence of record did not establish an election of PRBLI at no reduction. Similarly, in this case, the record does not contain evidence of such an election by appellant. It is thus unclear why OPM informed OWCP that premiums for PRBLI at no reduction should have been deducted as of July 21, 2012.<sup>21</sup>

As the fact and amount of overpayment are not clearly established by the record, the case will be remanded to OWCP. On remand, OWCP should obtain from OPM evidence of the executed election form completed by appellant prior to determining whether she received an

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<sup>15</sup> 5 C.F.R. § 870.504(a)(1).

<sup>16</sup> *Id.* at § 870.504(b).

<sup>17</sup> See *C.B.*, Docket No. 15-1953 (issued May 13, 2016).

<sup>18</sup> *Id.*

<sup>19</sup> See *E.G.*, Docket No. 15-0442 (issued April 19, 2016); *R.W.*, Docket No. 11-1303 (issued January 9, 2012).

<sup>20</sup> Docket No. 13-2164 (issued April 18, 2014).

<sup>21</sup> See *J.D.*, Docket No. 15-0481 (issued May 2, 2016).

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 of compensation in the amount of \$3,237.60 for the period July 21, 2012 to January 10, 2015 because OWCP failed to deduct premiums for PRBLI.<sup>22</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11 and April 15, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 15, 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

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<sup>22</sup> 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, recovery, and her request for a prerecouplement hearing.