



## **FACTUAL HISTORY**

Appellant, a 34-year-old mail carrier, injured her lower back while throwing mail onto a pouching table on November 27, 1999. She filed a claim for benefits, which OWCP accepted for lumbar sprain, generalized anxiety disorder, and thoracic or lumbosacral neuritis/radiculitis. Appellant returned to work and missed intermittent periods of work due to her accepted work injury.

By letter dated October 25, 2010, OWCP informed appellant that she was being placed on the periodic rolls, effective July 3, 2010 and that it was making deductions for health benefits, basic life and optional life Insurance. It commenced payment for temporary total disability compensation.

On March 21, 2013 appellant checked a box in response to Office of Personnel Management's (OPM) July 2, 2012 letter, indicating that she elected to continue receiving OWCP compensation benefits under FECA.

By letter dated June 13, 2013, OPM advised OWCP that appellant was eligible to continue receiving coverage under the Federal Employees Group Life Insurance (FEGLI) program. It indicated that the premiums were based on the "[n]o reduction" to basic option which she elected in choosing her postretirement life insurance, with a "[b]asic" salary of \$53,102.00; the commencing date for postretirement life insurance deductions was June 4, 2011. The letter asked OWCP "please deduct for Code Z51," with basic and optional coverage to begin on OWCP's commencing date.

In OWCP pay rate worksheets dated May 14, 2014, it was indicated that appellant had an overpayment of \$5,358.52 based on the difference between basic and optional life insurance premiums, and base salary, postretirement premiums for zero reduction premiums, incorrectly deducted from her monthly compensation checks from June 6, 2010 to May 3, 2014. It calculated the overpayment by adding the deductions from the following periods: the \$16.80 basic life deduction between June 6, 2010 and May 3, 2014, from which it subtracted \$13.80 for a total of \$3.30, which it multiplied times 51 (28-day) pay periods, for a total of \$168.30.

Regarding optional life insurance, the premium of \$57.30 for the period June 6, 2010 to January 14, 2012 was established, from which the deducted premium of \$46.50 multiplied by 21 pay periods was subtracted for a total of \$226.80; for the period between January 15, 2012 and August 24, 2013 the correct premium was found to be \$51.30, from which it subtracted \$42.50 for a total of \$8.80, which multiplied times 21 pay periods, for a total of \$184.80; the optional life insurance deduction for the period between August 25, 2013 and May 3, 2014, was determined to be \$82.40 from which it subtracted \$42.50 for a total of \$39.90, which it multiplied times 9 pay periods, for a total of \$226.80 in which it multiplied \$4.05 times 14 days, for a total of \$359.10. This amounted to a total overpayment of \$770.70 based on OWCP's failure to make the proper deductions for optional life insurance.

With regard to the total deductions for postretirement life insurance, OWCP added the deductions from the following periods; June 5, 2011 to January 14, 2012, multiplying \$113.39 times 8 pay periods (based on a 28-day pay period), totaling \$907.12; and January 15, 2012 to

May 3, 2014, multiplying \$117.08 times 30 pay periods (based on a 28-day pay period), totaling \$3,512.40, for a total overpayment of \$4,419.52. Totaling the above calculations, this amounted to a total overpayment of \$5,358.52 for the period June 6, 2010 to May 3, 2014.

On June 4, 2014 OWCP issued a preliminary determination that an overpayment had occurred in the amount of \$5,358.52 from June 6, 2010 to May 3, 2014. It noted that the overpayment had occurred because the appropriate life insurance premiums were not deducted from appellant's continuing compensation payments for the period; OWCP further advised that she had been found without fault for the creation of the overpayment. OWCP 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 precoupment hearing. It 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. Appellant did not respond to this determination.

In a decision dated July 8, 2014, OWCP finalized the preliminary determination regarding the overpayment of \$5,358.52. It found that appellant was not entitled to waiver because she did not complete the attached (Form OWCP-20) overpayment questionnaire and did not submit supporting documentation.

### **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.<sup>2</sup> 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.<sup>3</sup>

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

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,358.52 from June 6, 2010 to May 3, 2014. In its May 14, 2014 worksheets, OWCP calculated the amount of overpayment by adding the basic life premiums, which were not deducted from her monthly compensation checks between June 6, 2010 and May 3, 2014 for a total of \$168.30; the basic life premiums which were not deducted from her monthly compensation checks between June 6, 2010 to May 3, 2014 for a total of \$770.70; and the postretirement, zero reduction premiums which were not deducted from her monthly compensation checks from June 6, 2010 to May 3, 2014 for a total of \$4,419.52, in accordance with the calculations outlined above. Adding the totals from these periods, it

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<sup>2</sup> 20 C.F.R. §§ 870-73.

<sup>3</sup> See *James Lloyd Otte*, 48 ECAB 334, 337 (1997).

calculated a total overpayment of \$5,358.52. Based on this determination, OWCP properly found that appellant received an overpayment of compensation in the stated amount during that period.

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

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>4</sup> Section 10.438 of OWCP's regulation<sup>5</sup> 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 on an overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>6</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>7</sup>

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

OWCP determined that appellant was without fault in the creation of the overpayment. The fact that appellant was without fault does not preclude OWCP from recovering all or part of the overpayment.<sup>8</sup> She still bears responsibility for submitting financial information to support a request for waiver of the overpayment. As appellant did not respond to OWCP's June 4, 2014 preliminary determination and did not submit any financial information, it acted properly finding that she was not entitled to waiver under the defeat the purpose of FECA standard. There is no evidence of record to support that she met the criteria to qualify for waiver of the recovery of the overpayment.<sup>9</sup> In absence of the information requested, OWCP properly denied waiver of the overpayment.<sup>10</sup>

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<sup>4</sup> 5 U.S.C. § 8129.

<sup>5</sup> 20 C.F.R. § 10.438(a).

<sup>6</sup> Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. *Id.* at § 10.436. 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 attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. *Id.* at § 10.437.

<sup>7</sup> *Id.* at § 10.438(b).

<sup>8</sup> See *George A. Rodriguez*, 57 ECAB 224 (2005).

<sup>9</sup> See *E.M.*, Docket No. 07-785 (issued August 17, 2007); 20 C.F.R. § 10.436.

<sup>10</sup> See *P.T.*, Docket No. 14-1403 (issued November 6, 2014).

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

The amount of adjustment of continuing compensation to recover an overpayment lies within OWCP's discretion. The analysis that determines the amount of adjustment is substantially the same as that used to determine waiver.<sup>11</sup> With regard to the amount withheld from appellant's continuing compensation payments to recover the amount of the overpayment, section 10.441(a) of OWCP regulations provide:

“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 soon as the error is discovered or his or her attention is called to 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>12</sup>

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

After determining that appellant was not entitled to waiver of the recovery of the overpayment, OWCP found that she could repay the overpayment by withholding \$237.00 per month from her continuing compensation. As appellant did not provide any argument that this amount was not reasonable and would cause her hardship due to her financial circumstances, OWCP did not abuse its discretion in determining that repayment of the overpayment could be accomplished by withholding \$237.00 per month from her continuing compensation.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,358.52 from June 6, 2010 to May 3, 2014. The Board finds that the overpayment occurred because the appropriate life insurance premiums were not deducted from her continuing compensation payments during the period. The Board further finds that OWCP properly denied waiver of the overpayment, and that it properly directed recovery of the overpayment at the rate of \$237.00 per month from appellant's continuing compensation payments.<sup>13</sup>

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<sup>11</sup> *Howard R. Nahikian*, 53 ECAB 406 (2002).

<sup>12</sup> 20 C.F.R. § 10.441(a).

<sup>13</sup> The Board notes that appellant submitted additional evidence to the record following OWCP's July 8, 2014 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. *Id.* at § 501(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.<sup>14</sup>

Issued: March 3, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> James A. Haynes, Alternate Judge, participated in the preparation of the decision but was no longer a member of the Board effective November 16, 2015.