

aware of the \$3,343.44 overpayment. She asserts that recovery of the overpayment would cause undue hardship for her and her family.

FACTUAL HISTORY

OWCP accepted that on May 3, 2011 appellant, then a 51-year-old city carrier, sustained a lumbar herniated disc at L2-3 when she slipped and fell in muddy water. It authorized lumbar surgery performed on October 1, 2012.

Appellant began receiving wage-loss compensation on the supplemental rolls from July 2, 2011 to August 25, 2012. Periodic rolls payments continued through September 22, 2012. Subsequently, OWCP returned appellant to the supplemental rolls from April 7 to May 28, 2013. Appellant was placed back on the periodic rolls as of June 2, 2013. Postretirement life insurance premiums were not deducted from her payments.

In a June 4, 2013 letter, the Office of Personnel Management (OPM) informed OWCP that as a compensation, appellant was eligible to continue the Federal Employees' Group Life Insurance (FEGLI) coverage. The final base salary on which FEGLI was based was \$56,508.00. Appellant's postretirement election was no reduction and the commencement date for postretirement deductions was July 14, 2012. OWCP began making the deduction on August 24, 2014.

On September 19, 2014 OWCP issued a preliminary determination finding that appellant had been overpaid in the amount of \$3,343.44, because postretirement life insurance premiums were not paid from July 14, 2012 to August 23, 2014. It made a preliminary finding that she was without fault in creating an overpayment. OWCP stated that premiums for the period July 14, 2012 to August 23, 2014 amounted to \$3,343.44. It informed appellant of her right to challenge the fact or amount of the overpayment or request a waiver of the overpayment. If appellant wished a waiver of the overpayment, she was directed to submit financial information by completing an overpayment recovery questionnaire (Form OWCP-20). She was afforded 30 days to respond. An overpayment worksheet showed that \$3,343.44 should have been deducted from appellant's wage-loss compensation for the period July 14, 2012 to August 23, 2014. The preliminary determination was sent to her address of record. Appellant did not respond.

By decision dated April 6, 2015, OWCP finalized that appellant received an overpayment of compensation in the amount of \$3,343.44, for which she was not at fault. It denied waiver of recovery of the overpayment because she failed to submit the requested financial information. OWCP directed recovery from appellant's continuing compensation payments at the rate of \$350.00 per month commencing May 3, 2015. The decision was sent to her address of record.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program,² 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

² The law governing life insurance for federal employees is found at 5 U.S.C. §§ 8701-8716.

from the employee's pay. With certain restrictions, insurance benefits continue postretirement. Insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments.³ 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.⁴

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

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.⁶ Any employee who does not file a life insurance election with his or 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.⁷ 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.⁸

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.⁹ When an overpayment has been made to an individual because of an error of fact or law,

³ 5 C.F.R. §§ 870-73.

⁴ *James Lloyd Otte*, 48 ECAB 334, 337 (1997). 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte, id.* An underwithholding of premiums results in a two-tiered liability: The claimant owes the employing establishment the underwithheld funds, and similarly the employing establishment owes the insurance fund/OPM. If this occurs, OWCP must make OPM whole and remit the entire amount of the underwithholding, even if the debt is eventually waived. Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.401.11.b(2) (August 2004).

⁵ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁶ 5 C.F.R. § 870.504(a)(1).

⁷ *Id.* at § 504(b).

⁸ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte, supra* note 4.

⁹ *Id.* at § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹⁰

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 \$3,343.44 for the period July 14, 2012 to August 23, 2014.

Appellant has received compensation benefits from OWCP since July 2, 2011. 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 June 4, 2013 that appellant had elected the postretirement, no reduction option beginning July 14, 2012, it did not provide documentation of that election. In this case, OWCP simply relied on a statement from OPM and placed the burden on appellant to disprove the fact of the overpayment. A claimant is entitled to an adequate statement of reasons with respect to any final decision by OWCP.¹¹

In *N.J.*,¹² 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.

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.¹³ 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.

¹⁰ *Id.* at § 8129(a).

¹¹ *J.L.*, Docket No. 14-0194 (issued June 25, 2015). *See also L.D.*, Docket No. 12-1408 (issued April 26, 2013) (finding that OWCP did not provide adequate reasons for calculating an overpayment when the record contained no worksheets or other specific documentation confirming the amount of compensation received).

¹² Docket No. 13-2164 (issued April 18, 2014).

¹³ *See generally id.* (finding that the information from OPM did not sufficiently establish the date that a claimant's deductions for postretirement basic life began). *See S.K.*, Docket No. 15-0511 (issued September 9, 2015); *K.M.*, Docket No. 14-2001 (issued November 6, 2015).

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment in the amount of \$3,343.44 for the period July 14, 2012 to August 23, 2014.¹⁴

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this decision of the Board.

Issued: March 10, 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

¹⁴ 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.