

FACTUAL HISTORY

OWCP accepted that on September 18, 2010 appellant, then a 50-year-old mail city carrier, sustained a left foot calcaneal fracture, lumbar strain, bilateral knee sprain, and left ankle sprain when she slipped and fell on steps while delivering mail. Appellant stopped work on the date of injury and did not return. On November 19, 2010 she filed claims for wage-loss compensation (Forms CA-7) for the period beginning November 3, 2010 and continuing. Appellant received wage-loss compensation benefits from November 3, 2010 until she was placed on periodic rolls, effective July 16, 2011.

The employing establishment advised OWCP that deductions would include health benefits Code 105, basic life insurance, optional life insurance Code L0, and Federal Employment Retirement System (FERS) retirement benefits. It provided appellant the weekly pay rate used to compute her gross compensation benefits and noted deductions for her elected benefits of optional life insurance, basic life insurance and health insurance. OWCP did deduct the premiums for the health benefits, basic life insurance, and optional life insurance.²

By letter dated June 12, 2013, the Office of Personnel Management (OPM) advised OWCP that appellant had elected postretirement basic life insurance with no reduction, commencing November 5, 2011. It noted her base salary as \$56,508.00 and instructed OWCP to deduct premiums for Code L0 for basic, Option A standard, and Option B two times salary with no reduction.

On July 21, 2014 OWCP made preliminary findings that appellant had received an overpayment of \$238.37 for the period November 5 through December 31, 2011 and \$4,136.81 for the period January 1, 2012 through July 26, 2014 because premiums had not been deducted for the postretirement basic life insurance no reduction option. It calculated a total of \$4,375.18 should have been deducted from compensation paid from November 5, 2011 through July 26, 2014. OWCP found that appellant was without fault in the creation of the overpayment. Appellant was informed of her options if she wished to challenge the fact of overpayment or to request waiver of recovery of the overpayment. If she wished a waiver of the overpayment, she was advised to submit financial information and a completed overpayment recovery questionnaire (Form OWCP-20) within 30 days.

On August 15, 2014 appellant requested a prerecoumpment hearing. She indicated that the overpayment occurred through no fault of her own and requested a waiver of repayment due to financial hardship as a result of caring for her disabled daughter. Appellant reported income of \$2,761.64 per month and assets of \$830.00. Financial documentation pertaining to claimed income, expenses, or assets was not submitted.³

² On September 1, 2011 appellant's former counsel notified OWCP of a September 18, 2010 personal injury with respect to a third-party damage claim.

³ On September 11, 2014 appellant's former counsel provided OWCP a check in the amount of \$169,321.43 pertaining to the government's right to refund as a result of a third-party recovery. Appellant received a total of \$75,565.12 from the recovery. On October 2, 2014 OWCP acknowledged receipt of the payment of \$169,321.43 and related that it satisfied the government's statutory right to repayment.

By letter dated September 17, 2014, OWCP notified appellant that her hearing would be held on November 17, 2014 at 9:45 a.m. (Eastern Standard Time) in New York, New York. It provided her with the address for the hearing location. OWCP also addressed this notice to appellant's then counsel. Appellant failed to appear.

By decision dated December 9, 2014, OWCP found that there was an overpayment in the amount of \$4,375.18 for the period November 5, 2011 through July 26, 2014 because premiums had not been deducted for postretirement basic life insurance at the no reduction option. It further found that appellant was not at fault in the creation of the overpayment because she was not, and could not have been aware of the error in premium deductions. OWCP determined that she was not eligible for waiver of recovery of the overpayment because she failed to submit documentation supporting her financial information. It noted that appellant had received a surplus of \$75,565.12 on September 10, 2014 as a result of a third-party recovery. As such, OWCP determined that she was capable of paying the \$4,375.18 overpayment in full rather than deducting a monthly amount from continuing compensation payments. It also found that appellant had abandoned her request for a precoupment hearing regarding the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁴ The coverage for basic life insurance is effective unless waived,⁵ and premiums for basic and optional life coverage are withheld from the employee's pay.⁶ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁷ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,⁸ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his or her compensation.⁹

⁴ 5 U.S.C. § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *Id.* at § 8706.

⁸ *Id.* at § 8707(b)(2).

⁹ *Id.* at § 8706(b)(3)(B). See *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that the claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). See also *Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

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 2 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).¹⁰

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.¹¹ Any employee who does not file a life insurance election form 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.¹² 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.¹³

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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision on whether an overpayment of compensation occurred.

Appellant stopped work on September 18, 2010 and began receiving compensation benefits. On July 16, 2011 she was placed on periodic rolls. The employing establishment advised OWCP to deduct premiums for health benefits Code 105, basic life insurance, optional life insurance Code L0, and retirement FERS. No reference was made, however, to the additional premiums for the postretirement basic life insurance at the no reduction option. By

¹⁰ See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹¹ 5 C.F.R. § 870.504(a)(1).

¹² *Id.* at § 870.504(b).

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

¹⁴ *Id.* at § 8102(a).

¹⁵ *Id.* at § 8129(a).

letter dated August 18, 2011, OWCP informed appellant of the weekly pay rate used to compute her periodic rolls gross compensation benefits and noted the premium deductions for optional life insurance, basic life insurance, and health insurance.

By letter dated June 12, 2013, OPM advised OWCP that premiums for postretirement basic life insurance at no reduction should have been deducted from appellant's compensation commencing November 5, 2011.

In a preliminary July 21, 2014 determination and final December 9, 2014 decision, OWCP found that appellant had received an overpayment in the amount of \$4,375.18 for the period November 5, 2011 through July 26, 2014 because premiums had not been properly deducted for postretirement basic life insurance at the no reduction option.

The Board finds that OWCP did not present adequate facts and findings to support its determination that appellant had received a \$4,375.18 overpayment for the period November 5, 2011 through July 26, 2014. The Board notes that the record does not provide any evidence that she signed a document electing postretirement basic life insurance at no reduction.¹⁶ OPM's June 12, 2013 letter indicates that appellant was enrolled in that option commencing November 5, 2011, but provides no supporting documentation establishing such enrollment. The record contains no election form, signed and dated by her, showing which coverage she actually elected. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after retirement.¹⁷

In the case *N.J.*,¹⁸ the Board remanded the case to OWCP for further development because the evidence of record did not establish an election of postretirement basic insurance at no reduction. Similarly, in this case the record does not contain evidence of such an election by appellant. It remains unclear why premiums for postretirement basic life insurance at no reduction were to have been deducted from her compensation as of November 5, 2011, as there is no documentation of record establishing that she actually elected that option.

OWCP finalized its December 9, 2014 decision without making findings of fact with respect thereto.¹⁹ Instead, it relied upon a letter from OPM to establish the fact of the election. 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. On remand, OWCP should obtain from OPM the executed election form completed by appellant prior to determining

¹⁶ *John D. Van Delft*, Docket No. 93-1236 (issued August 9, 1994).

¹⁷ *R.W.*, Docket No. 11-1303 (issued January 9, 2012).

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

¹⁹ A claimant is entitled to an adequate statement of reasons with respect to any final decision by OWCP. 20 C.F.R. § 10.126. *See also L.D.*, Docket No. 12-1408 (issued April 26, 2013).

whether she received an overpayment of compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.²⁰

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$4,375.18 for the period November 5, 2011 through July 26, 2014.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: May 2, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²⁰ As the issues of fact and amount of overpayment are to be further developed upon return of the case record, the issues of waiver and recovery of the overpayment are not in posture for decision at this time. *See S.G.*, Docket No. 14-769 (issued December 9, 2014); *see also J.H.*, Docket No. 07-656 (issued July 26, 2007).