

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

C.B., Appellant)
and) Docket No. 15-1953
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 13, 2016
Atlanta, GA, Employer)

)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 25, 2015 appellant filed a timely appeal from a September 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly found an overpayment of compensation in the amount of \$614.62 was created because it failed to correctly withhold premiums for optional postretirement life insurance from December 27, 2014 to May 30, 2015; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly found that the overpayment should be recovered by deducting \$100.00 from appellant's continuing compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 26, 2012 appellant filed a traumatic injury claim (Form CA-1) alleging an injury on September 19, 2012 while in the performance of duty as a city carrier. She reported in an accompanying letter that she felt swelling in her left fourth finger and believed that handling heavy books had caused a strain to her hand and back. On October 12, 2012 OWCP accepted the claim for lumbar strain and left index finger strain. It expanded the accepted conditions on May 13, 2013 to include aggravation of degenerative disc disease at L4-5, L5-S1.²

Appellant began receiving wage-loss compensation intermittently as of March 19, 2013. She filed Form CA-7 claims for compensation through February 21, 2014. The reverse of the CA-7 forms noted that appellant had optional life insurance. She underwent lumbar fusion surgery on February 3, 2014. As of March 9, 2014, appellant began receiving compensation every 28 days for total disability on the periodic rolls. The payments showed deductions for optional life insurance premiums.

In a letter dated June 9, 2015, the Office of Personnel Management (OPM), Retirement Operations Center, informed OWCP that appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI). The final base salary on which FEGLI was based was \$59,294.00. OPM indicated that OWCP should deduct premiums for Code Z5, which included basic and optional coverage of "Option C 5x Family -- No Reduction." The postretirement election was reported as no reduction, and the commencement date was December 27, 2014 for postretirement premium deductions.

OWCP prepared a calculation worksheet dated July 13, 2015 with respect to compensation from December 27, 2014 to May 30, 2015. The form indicated that \$614.62 should have been deducted for postretirement basic life insurance.

On July 20, 2015 OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$614.62 had been created. It indicated that the June 9, 2015 letter established that appellant had elected postretirement basic life insurance at the "no reduction" level and premiums from December 27, 2014 to May 30, 2015 should have been deducted from her compensation. OWCP also found she was not at fault in creating the overpayment, and requested that she submit a Form OWCP-20 overpayment recovery questionnaire and supporting documents within 30 days. Appellant did not respond within the allotted time.

By decision dated September 8, 2015, OWCP finalized its preliminary determination that an overpayment of compensation in the amount of \$614.62 was created. It denied waiver of recovery of the overpayment, finding appellant had not timely submitted any relevant evidence.

² There is some confusion in the record regarding the September 19, 2012 incident or incidents. In an April 30, 2013 report, attending orthopedic surgeon, Dr. James Plas, provided a history of a fall at work on September 19, 2012, and a second fall on December 6, 2012. The statement of accepted facts prepared under the present claim also refers to a fall at work on September 19, 2012. As noted above, the claim for injury on September 19, 2012 was based on handling of heavy books. The record does contain a Form CA-1 claiming a fall at work on December 6, 2012.

With respect to recovery, OWCP indicated that \$100.00 would be deducted from continuing compensation payments.

LEGAL PRECEDENT

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.³ The coverage for basic life insurance is effective unless waived,⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.⁵ 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.⁶ Basic life insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁷ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.⁸

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 compensation, so that his 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).⁹

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

³ 5 U.S.C. § 8702(a).

⁴ *Id.* at 8702(b).

⁵ *Id.* at 8707.

⁶ *Id.* at 8706.

⁷ *Id.* at 8707(b)(2).

⁸ *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 July 1983 through November 1989).

⁹ See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

employment, he or she filed an election or waiver that remains in effect.¹⁰ 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.¹¹ 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.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

In the present case, OWCP has found an overpayment of compensation in the amount of \$614.62 occurred from December 27, 2014 to May 30, 2015, because it failed to properly deduct premiums for postretirement basic life insurance. The basis for this finding was a June 9, 2015 letter from OPM informing OWCP that appellant had elected post retirement life insurance at the “no reduction” coverage level as of December 27, 2014.

The Board has held, however, that there must be sufficient evidence of record that documents the proper election of postretirement life insurance benefits. When the record does not contain a signed election form, OWCP has failed to properly document the election and the date such election commences. In *J.L.*, the only evidence as to an overpayment was a letter from OPM reporting that appellant had elected postretirement basic life insurance as of a certain date.¹⁵ The Board remanded the case to OWCP to obtain from OPM the executed election form completed by appellant prior to determining whether there was an overpayment of compensation.¹⁶

The record in this case does not contain a copy of the executed election form completed by appellant with respect to postretirement basic life insurance. The only evidence in this regard is the June 9, 2015 OPM letter from OPM, which was not signed by appellant. In accordance with Board precedent, the case will be remanded to OWCP for further development of the

¹⁰ 5 C.F.R. § 870.504(a)(1).

¹¹ *Id.* at 870.504(b).

¹² 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 534 (1997).

¹³ 5 U.S.C. § 8102(a).

¹⁴ *Id.* at 8129(a).

¹⁵ Docket No. 14-1094 (issued June 25, 2015).

¹⁶ *Id.*; *see also D.W.*, Docket No. 15-0341 (issued April 18, 2016); *N.J.*, Docket No. 13-2164 (issued April 18, 2014).

evidence. On remand OWCP should obtain from OPM the executed election form with respect to postretirement basic life insurance. After such further development as is deemed necessary, it should issue a *de novo* decision. In view of the Board's findings, the issues of waiver and recovery will not be addressed on this appeal.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 13, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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