

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

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<b>S.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 16-1795</b>
	)	<b>Issued: March 2, 2017</b>
<b>DEPARTMENT OF LABOR, OFFICE OF THE</b>	)	
<b>INSPECTOR GENERAL, New York, NY,</b>	)	
<b>Employer</b>	)	

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*Appearances:* *Case Submitted on the Record*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 9, 2016 appellant filed a timely appeal from an August 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant received an overpayment of compensation in the amount of \$622.08 because OWCP failed to deduct Federal Employees Group Life Insurance (FEGLI) premiums for the period January 10 through April 2, 2016; (2) whether OWCP properly denied waiver of recovery or the overpayment; and (3) whether OWCP properly required repayment in full of the \$622.08 overpayment by deducting this amount from appellant's continuing compensation on September 18, 2016.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On appeal appellant questions whether his life insurance coverage extended during the period of the overpayment.

### **FACTUAL HISTORY**

On October 21, 1988 appellant, then a 46-year-old criminal investigator, was injured in a motor vehicle accident. Following an initial denial on January 17, 1989 OWCP accepted the conditions of cervical and lumbar radiculopathy on March 6, 1989.<sup>2</sup> Appellant received wage-loss compensation and he remains on the periodic compensation rolls.

The record contains a FEGLI election letter, signed by appellant on November 14, 1983, noting that he elected optional life insurance (OLI) in a multiple of five times his basic pay.

By letter dated November 12, 2008, appellant informed both OWCP and the Office of Personnel Management (OPM) that he wished to change his OLI from a multiple of five to a multiple of two.<sup>3</sup> On December 16, 2008 OPM informed OWCP of the election. OWCP adjusted the insurance premium effective December 1, 2008.

On February 11, 2016 appellant informed OWCP that, for the period beginning December 13, 2015 and ending January 9, 2016, life insurance premiums had not been deducted from his wage-loss compensation. He attached a benefit statement for the period January 10 to February 6, 2016, which showed no deduction for OLI. On February 16, 2016 OWCP telephoned appellant and explained that his was one of several cases where premium deductions were inadvertently reduced to zero. It explained that he continued to be covered and that his OLI premium would be reinstated with the next pay cycle.

On May 18, 2016 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$622.08 had been created for the period January 10 through April 2, 2016. It explained that the overpayment occurred because OLI premiums in the amount of \$207.36 had not been withheld for three compensation periods. OWCP found appellant not at fault and provided an overpayment action request and overpayment questionnaire (OWCP Form 20). It informed him that, in order for it to consider the question of waiver of recovery or to determine a reasonable method for collection, he must provide a completed Form 20 and attach supporting financial documentation, including copies of income tax returns, bank statements, bills, canceled checks, pay slips, and any other record to support claimed income and expenses.

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<sup>2</sup> The record is unclear regarding the accepted conditions. As noted, the March 6, 1989 decision lists cervical and lumbar radiculopathy. A Nonfatal Summary includes herniated cervical and lumbar discs and injuries to multiple sites; an August 23, 1990 OWCP letter to appellant includes the lumbar conditions and head trauma, but does not mention the cervical conditions; an August 26, 1991 letter and statement of accepted facts dated August 21, 1992 merely includes head trauma and injury to multiple sites; a December 7, 1998 letter from OWCP to appellant lists cervical and lumbar degenerative disc disease; and a January 31, 2003 OWCP memorandum indicates head trauma, multiple site injury with herniated discs at C5-6 and L5-S1, a bulging disc at L1-2, and lumbar radiculopathy. An August 13, 2014 letter to appellant's physician listed accepted conditions of concussion without loss of consciousness and intervertebral disc disorder with myelopathy, lumbar region, as the only accepted conditions.

<sup>3</sup> In a decision dated January 30, 2008, OWCP found an overpayment of compensation in the amount of \$6,222.30 had been created because OWCP withheld OLI premiums based upon an incorrect salary. It found appellant not at fault and denied waiver because he had not provided a complete overpayment questionnaire or financial information. This overpayment has been repaid.

OWCP notified appellant that failure to submit the requested information within 30 days would result in the denial of waiver of recovery.

The record includes a fiscal worksheet and computer print-outs showing that no deductions had been made for OLI for the three compensation periods beginning January 10, 2016. A second fiscal worksheet and a payment report indicated that the OLI premium deduction was to be reinstated effective April 3, 2016.

Appellant did not respond to the preliminary overpayment letter. By decision dated August 12, 2016, OWCP finalized the preliminary overpayment decision, finding that he received an overpayment of compensation in the amount of \$622.08 and, while he was not at fault, he was not entitled to waiver of the overpayment because he had failed to provide the requested financial information. Repayment in the amount of \$622.08 was to be deducted from appellant's continuing compensation payment on September 18, 2016.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>4</sup> The coverage for basic life insurance is effective unless waived<sup>5</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</sup> 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 OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.<sup>7</sup> Basic life insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>8</sup> however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his compensation.<sup>9</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 his compensation, so that his or her life insurance coverage could be continued without reduction. Regulations at 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

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<sup>4</sup> 5 U.S.C. § 8702(a).

<sup>5</sup> *Id.* at § 8702(b).

<sup>6</sup> *Id.* at § 8707.

<sup>7</sup> *Id.* at § 8706.

<sup>8</sup> *Id.* at § 8707(b)(2).

<sup>9</sup> *Id.* at § 8706(b)(3)(B); *see Edward J. Shea*, 43 ECAB 1022 (1992).

C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).<sup>10</sup>

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 remained in effect.<sup>11</sup> 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.<sup>12</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>13</sup>

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>14</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>15</sup>

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

In the present case, OWCP found that an overpayment of compensation in the amount of \$622.08 occurred for the period January 10 through April 2, 2016 because it failed to properly deduct premiums for OLI. The basis for this finding includes appellant's letter dated November 12, 2008 in which he requested that his OLI be changed from a multiple of five to a multiple of two, and the December 16, 2008 letter in which OPM informed OWCP of this election, after which OWCP adjusted his OLI premiums. On February 11, 2016 appellant informed OWCP that, beginning on December 13, 2015, OLI premiums had not been deducted from his compensation, and he attached a benefit statement verifying this information. On February 16, 2016 OWCP informed him that his premiums had been inadvertently reduced to zero, but that the coverage continued. The record also includes computer printouts showing that no deductions had been made for OLI for three compensation periods beginning January 10, 2016. A worksheet and a payment report indicate that the OLI premium deduction was to be reinstated effective April 3, 2016.

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

<sup>11</sup> 5 C.F.R. § 870.504(a)(1).

<sup>12</sup> *Id.* at § 870.504(b).

<sup>13</sup> *Id.* at § 8707(d); see also *Keith H. Mapes*, 56 ECAB 130 (2004).

<sup>14</sup> *Id.* at § 8102(a).

<sup>15</sup> *Id.* at § 8129(a).

The Board therefore finds that as the OLI premiums were not deducted from appellant's FECA compensation for the period January 10 through April 2, 2016, OWCP properly found an overpayment of compensation in the amount of \$622.08.<sup>16</sup>

### **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>17</sup> Section 10.438 of OWCP regulations provides that [t]he 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. Failure to submit the requested information within 30 days of the request shall result in the denial of waiver.<sup>18</sup>

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP regulations.<sup>19</sup>

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>20</sup> For waiver under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.<sup>21</sup> OWCP procedures provide that the assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent.<sup>22</sup>

An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits. Nonliquid assets include, but

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<sup>16</sup> See *B.B.*, Docket No. 16-0135 (issued March 9, 2016).

<sup>17</sup> 5 U.S.C. § 8129.

<sup>18</sup> 20 C.F.R. § 10.438.

<sup>19</sup> *Id.* at §§ 10.434-10.437.

<sup>20</sup> *Id.* at. § 10.436.

<sup>21</sup> *Id.*

<sup>22</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(4)(b) (June 2009).

are not limited to the fair market value of an owner's equity in property such as a camper, boat, second home and furnishings/supplies.<sup>23</sup>

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

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>24</sup> Appellant, however, had the responsibility to provide financial information to OWCP<sup>25</sup> and did not do so.

In its preliminary determination dated May 18, 2016, OWCP clearly explained the importance of providing the completed overpayment questionnaire and financial information. It advised appellant that it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant did not submit a completed overpayment questionnaire or otherwise submit financial information supporting his income and expenses at any time. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP regulations, which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$622.08.<sup>26</sup>

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

Section 10.441 of OWCP's regulations provides that 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 the 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 hardship.<sup>27</sup>

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

Although OWCP provided appellant an overpayment recovery questionnaire with the May 18, 2016 preliminary finding, as noted, he did not submit a completed questionnaire or other financial information that OWCP had requested prior to the final August 12, 2016 overpayment decision. The overpaid individual is responsible for providing information about

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<sup>23</sup> *Id.*

<sup>24</sup> *Supra* note 11.

<sup>25</sup> 20 C.F.R. § 10.438.

<sup>26</sup> *Id.*; *see S.A.*, Docket No. 15-0592 (issued April 9, 2015).

<sup>27</sup> *Id.* at § 10.441; *see Steven R. Cofrancesco*, 57 ECAB 662 (2006).

income, expenses, and assets as specified by OWCP.<sup>28</sup> When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.<sup>29</sup> As appellant did not submit any financial information to OWCP as requested, the Board finds that there is no evidence in the record to show that OWCP erred in directing recovery of the \$622.08 overpayment in full from his continuing compensation.

As to appellant's question on appeal, as explained by OWCP on February 16, 2016, his OLI remained in effect even when premium deductions were not made for the period of the overpayment of compensation.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$622.08, that OWCP properly denied waiver of recovery of the overpayment, and that it properly required repayment in full from his continuing compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2017  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>28</sup> *Supra* note 25.

<sup>29</sup> *Frederick Arters*, 53 ECAB 397 (2002); *supra* note 22 at Chapter 6.200.4(c)(2) (May 2004).