

OWCP properly determined that it would recover the overpayment by deducting \$179.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On September 28, 2015 appellant, a 42-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that while at work on September 23, 2015 she sustained knee, ankle, hand, and arm injuries due to a slip and fall on a sidewalk in the rain. OWCP accepted the claim for strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm, and complete rotator cuff tear or rupture of left shoulder, not specified as traumatic, and placed appellant on the periodic rolls effective March 6, 2016.³

In a February 14, 2017 letter, appellant requested information regarding how much was being paid for both health and life insurance out of her compensation payments, along with the corresponding insurance codes.

In a March 3, 2017 letter, OWCP advised appellant that her current health insurance was HBI Code F81 at a cost of \$137.68 and Basic Life Insurance at a cost of \$12.90 every 28 days.

In a letter dated July 17, 2017, the Office of Personnel Management (OPM) advised OWCP that appellant elected to continue postretirement basic life insurance (PRBLI) as a compensation and elected to receive PRBLI at the "No Reduction" option. It further indicated that her PRBLI coverage began on February 4, 2017.

By notice dated July 26, 2017, OWCP advised appellant of its preliminary determination that an overpayment of compensation in the amount of \$534.02 had been created because she had elected PRBLI with no reduction effective February 4, 2017, but OWCP did not begin deducting PRBLI premiums from her compensation payments until July 23, 2017. Consequently, appellant was in arrears for the premiums from February 4 through July 23, 2017. OWCP found that she was without fault in the creation of the overpayment. It advised appellant of her right to request a telephone conference, a final decision based on the written evidence or a precoupment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. OWCP further advised appellant was to complete an overpayment recovery questionnaire (OWCP-20) and submit supporting financial documents. It mailed the preliminary determination to appellant's address of record. OWCP did not receive any additional documentation.

By decision dated August 29, 2017, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$534.02 because PRBLI premiums were not properly deducted from her compensation payments for the period February 4 through July 23, 2017. It found that she was without fault in the creation of the overpayment, but that she was not entitled to waiver of recovery because she had failed to provide any supporting financial documentation, such as copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting the income and expenses listed on

³ On December 29, 2015 appellant filed a claim for compensation (Form CA-7) for the period November 9 to December 11, 2015. By decisions dated March 22, 2015 and May 25, 2016, OWCP denied the claim because the medical evidence was insufficient to establish disability for the period claimed.

her overpayment recovery questionnaire. OWCP directed recovery by deducting \$179.00 every 28 days from her continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

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 his or her duty.⁴ 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.⁵

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁶ The coverage for basic life insurance is effective unless waived⁷ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁸ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.⁹

ANALYSIS -- ISSUE 1

The record reflects that OPM notified OWCP of an underwithholding of PRBLI premiums for the period February 4 through July 23, 2017. OWCP calculated the amount of the underwithholding and resulting overpayment to be \$534.02. It further found that appellant was without fault in the creation of the resulting overpayment. As OWCP failed to deduct PRBLI premiums for the period February 4 through July 23, 2017, appellant received an overpayment of compensation in the amount of \$534.02 during this period.¹⁰ The Board notes that she does not contest the amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment must be recovered 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."¹¹ Thus, a

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁰ See *E.H.*, Docket No. 15-0848 (issued July 6, 2016); *V.B.*, Docket No. 15-0157 (issued March 16, 2015).

¹¹ *Id.* at § 8129(a)-(b).

finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹²

According to 20 C.F.R. § 10.436, 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 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.¹³ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds, and certificates of deposits.¹⁴ Nonliquid assets include, but 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, vehicle(s) (*i.e.*, any vehicles above the two allowed per immediate family), jewelry, and artwork.¹⁵

Section 10.437 provides that 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.¹⁶ To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

OWCP found that appellant was without fault in creating the overpayment of compensation and considered whether she was entitled to waiver of recovery. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living

¹² See *L.S.*, 59 ECAB 350 (2008).

¹³ 20 C.F.R. § 10.436. OWCP procedures provide that 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. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 20 C.F.R. § 10.437.

¹⁷ *Id.* at § 10.437(b)(1).

expenses and that her assets do not exceed the established limit as determined by OWCP procedures.¹⁸

The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering all or part of the overpayment.¹⁹ Appellant failed to respond and provide an overpayment recovery questionnaire indicating her monthly income and expenses. She submitted no evidence or argument that she relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt. Thus, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

On appeal appellant contends that she did not receive OWCP's preliminary determination, even though her home and mailing address had not changed, and she was not aware of the overpayment until she received OWCP's final decision dated August 29, 2017. The record indicates that OWCP mailed a copy of its July 26, 2017 preliminary determination to her correct address of record. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual.²⁰ This presumption known as the mailbox rule arises when it appears from the record that the notice was properly addressed and duly mailed.²¹ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of OWCP itself, will raise the presumption that the original was received by the addressee.²²

The record shows that OWCP mailed its July 26, 2017 preliminary determination to appellant's last known address. There is no evidence that appellant notified OWCP of any change in her address prior to the issuance of its July 26, 2017 preliminary overpayment determination. A presumption of receipt, therefore, arises in this case.²³ Accordingly, the Board finds that OWCP's July 26, 2017 notice was properly issued on that date and appellant's argument is not substantiated.

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of OWCP's regulations provide 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

¹⁸ *Id.* at § 10.436.

¹⁹ *See George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

²⁰ *See George F. Gidicsin*, 36 ECAB 175 (1984) (the Board held that when OWCP sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice). *See also D.L. Solano*, Docket No. 04-0702 (issued July 2, 2004).

²¹ *See Michelle Lagana*, 52 ECAB 187 (2000).

²² *See Larry L. Hill*, 42 ECAB 596 (1991).

²³ *See Cresenciano Martinez*, 51 ECAB 322 (2000).

the overpayment as soon as the error is discovered or his or her attention is called to same.²⁴ 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.²⁵

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation payments by \$179.00 every 28 days taking into account the amount of the compensation and the financial circumstances of her to minimize hardship, as well as the factors set forth in section 10.441 of OWCP's regulations. It found that this method of recovery would minimize any resulting hardship on her. OWCP instructed appellant to complete an overpayment recovery questionnaire and submit supporting financial documents, but she failed to do so. The Board finds that OWCP properly required repayment of the overpayment of compensation by deducting \$179.00 every 28 days from her continuing compensation payments.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$534.02 for the period February 4 through July 23, 2017, for which she was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly determined that it would recover the overpayment by deducting \$179.00 every 28 days from her continuing compensation payments.

²⁴ 20 C.F.R. § 10.441.

²⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2018
Washington, DC

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

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

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