

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 17-1791
Issued: February 23, 2018**

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 August 21, 2017 appellant, through counsel, filed a timely appeal from a July 12, 2017 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 appellant received an overpayment of compensation in the amount of \$1,280.18 for the period June 25, 2016 through April 29, 2017 because OWCP failed to deduct premiums for postretirement basic life insurance (PRBLI) from his wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On September 19, 1995 appellant, then a 32-year-old mail handler, filed a recurrence of disability claim (Form CA-2a) alleging that on that date he sustained a recurrence of disability

¹ 5 U.S.C. § 8101 *et seq.*

causally related to an accepted August 22, 1995 employment injury.² OWCP determined that his claim should be adjudicated as a traumatic injury claim and assigned File No. xxxxxx648. It accepted the claim for strains of the lateral collateral ligament and anterior cruciate ligament of the right knee, right knee chondromalacia, a right medial meniscus tear, an infection and inflammatory reaction due to internal right knee prosthesis, and other mechanical complications of internal right knee prosthesis.³

Following his employment injury, appellant sustained intermittent periods of total disability.⁴ In June 2015 he stopped work and did not return. OWCP paid appellant wage-loss compensation for total disability beginning June 22, 2015.

On November 29, 2016 the Office of Personnel Management (OPM) related that appellant had elected PRBLI with no reduction as of June 25, 2016. Effective April 30, 2017, OWCP began deducting premiums for PRBLI from his wage-loss compensation.

OWCP, by letter dated May 22, 2017, notified appellant of its preliminary determination that it overpaid him wage-loss compensation in the amount of \$1,280.18 because he elected PRBLI with no reduction beginning June 25, 2016, but it did not deduct the premiums until April 30, 2017. It calculated the overpayment by determining the amount of PRBLI it should have deducted from his wage-loss compensation from June 25, 2016 to April 29, 2017. OWCP further advised appellant of its preliminary determination that he was without fault in creating the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire (OWCP-20) and submit supporting financial documents. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In an overpayment action request form completed June 1, 2017, appellant requested a telephone conference with OWCP regarding the overpayment. He asserted that he was without fault in creating the overpayment and requested waiver of recovery. In an accompanying OWCP-20 form, appellant indicated that he received income of \$1,062.00 from the Department of Veterans Affairs (DVA) monthly and also provided his monthly expenses. He listed assets of \$23,439.00, noting that he was saving to purchase a house. Appellant indicated that he made monthly support payments to a minor son and his former spouse.

On June 27, 2017 appellant elected to receive benefits under the DVA in lieu of workers' compensation benefits effective that date.

² Appellant previously filed a notice of traumatic injury (Form CA-1) alleging that he twisted his right knee on August 22, 1995. OWCP assigned the claim File No. xxxxxx366 and administratively closed the case.

³ On June 13, 2000 OWCP accepted that appellant sustained right carpal tunnel syndrome, assigned File No. xxxxxx201. On September 18, 2006 it accepted that he sustained bilateral carpal tunnel syndrome under File No. xxxxxx915. These other claims have been administratively combined with the present claim, OWCP File No. xxxxxx648, which serves as the master file.

⁴ By decision dated June 16, 1998, OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. In decisions dated September 29 and November 20, 2008, it denied his request for an increased permanent impairment.

OWCP advised appellant that it had scheduled a telephone conference on July 12, 2017 to address whether he was entitled to waiver of recovery of the overpayment and, if not, arranging repayment. It requested that he submit verification of his income and expenses.

In a July 12, 2017 memorandum of conference, OWCP informed appellant that he did not qualify for waiver of recovery of the overpayment due to his assets. It recommended that he submit \$20.00 per month as repayment of the overpayment. OWCP noted that appellant had asked OPM to change his PRBLI coverage to 75 percent reduction.

By decision dated July 12, 2017, OWCP found that appellant had received an overpayment of compensation in the amount of \$1,280.18 for the period June 25, 2016 through April 29, 2017 because it failed to deduct premiums for PRBLI from his wage-loss compensation benefits. It further determined that he was without fault in creating the overpayment, but denied waiver of recovery of the overpayment based on his liquid assets of \$23,439.00. OWCP found that appellant should submit \$20.00 per month as repayment of the overpayment.

On appeal appellant notes that it took OWCP over a year to process his life insurance, causing a significant overpayment. He questions why he has to repay the overpayment given that he was without fault in its creation.

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.⁵ The coverage for basic life insurance is effective unless waived⁶ and premiums for basic and optional life coverage are withheld from the employee's pay.⁷ 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 annuity or compensation payments.⁸ Basic life insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.⁹ However, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his continuing compensation.¹⁰

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

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ *Id.* at § 8707(b)(2).

¹⁰ *Id.* at § 8706(b)(3)(B); see *Edward J. Shea*, 43 ECAB 1022 (1992).

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).¹¹

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.¹² Any employee who does not file a life insurance election form with his 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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 1

OPM notified OWCP on November 29, 2016 that appellant had elected PRBLI with no reduction effective June 25, 2016. OWCP, however, did not deduct premiums for PRBLI from his wage-loss compensation until April 30, 2017. It calculated the amount of the resulting overpayment as \$1,280.18. As noted, 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.¹⁷

¹¹ See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 C.F.R. § 870.504(a)(1).

¹³ *Id.* at § 870.504(b).

¹⁴ *Id.* at § 8707(d); see also *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁵ *Id.* at § 8102(a).

¹⁶ 5 U.S.C. § 8129.

¹⁷ *Supra* note 15.

As OWCP failed to deduce PRBLI premiums from June 25, 2016 through April 29, 2017, appellant received an overpayment of compensation of \$1,280.18 during this period.¹⁸ The Board also notes that he does not contest fact or amount of the overpayment.¹⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment of 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.”²⁰ Section 10.438 of OWCP regulations provides that the 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 of 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 denial of waiver.²¹

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.²²

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.²³ An individual is deemed to need substantially all or his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²⁴

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.²⁵ 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

¹⁸ See *E.H.*, Docket No. 15-0848 (issued July 6, 2016); *V.B.*, Docket No. 15-0157 (issued March 16, 2015).

¹⁹ See *J.H.*, Docket No. 15-1385 (issued October 27, 2015).

²⁰ 5 U.S.C. § 8129.

²¹ 20 C.F.R. § 10.438.

²² 5 U.S.C. § 10.434-10.437.

²³ 20 C.F.R. § 10.436

²⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (June 2009).

²⁵ *Id.*

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.²⁶

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.²⁷ The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA as he has not shown that his assets do not exceed the allowable resource base.²⁸ On the completed overpayment recovery questionnaire, he indicated that he had checking accounts, savings accounts, stocks, and bonds totaling \$23,439.00. Appellant also claimed his minor son, for whom he provided monthly support payments, as a dependent, for an applicable resource base of \$8,000.00.²⁹ As his assets exceed the \$8,000.00 resource base, he has not shown that recovery of the overpayment would defeat the purpose of FECA.³⁰ Because appellant has not met the second prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary to consider whether his monthly income exceeded his monthly ordinary and necessary expenses by more than \$50.00.³¹

Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.³² OWCP procedures provide that 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.³³

Appellant submitted no evidence to show that he gave up a valuable right or changed his position for the worse in reliance on anticipated compensation payments. Thus, he has not shown that, if required to repay the overpayment, he would be in a worse position after repayment than if he had never received the overpayment at all. OWCP, therefore, properly

²⁶ *Id.*

²⁷ *Supra* note 22; *see also M.H.*, Docket No. 17-0766 (issued July 3, 2017).

²⁸ *Supra* note 24.

²⁹ Appellant claimed his former wife as a dependent but the definition of a dependent does not include an ex-wife. *See* 5 U.S.C. § 8110(a)(1); *K.H.*, Docket No. 07-2265 (issued April 28, 2008).

³⁰ *Supra* note 25.

³¹ *See C.M.*, Docket No. 08-1119 (issued May 13, 2009).

³² 20 C.F.R. § 10.437; *see W.P.*, 59 ECAB 514 (2008).

³³ *Supra* note 24 at Chapter 6.200.6b(3) (June 2009).

determined that appellant was not entitled to waiver as that recovery would be against equity and good conscience.³⁴

On appeal appellant notes that actions by OWCP resulted in a large overpayment and questions why he has to repay the overpayment since he was not at fault in its creation. As discussed, however, he is not entitled to waiver even though he was without fault in creating the overpayment as his assets exceed the applicable resource base.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,280.18 because OWCP failed to deduct premiums for PRBLI for the period June 25, 2016 until April 30, 2017 from his wage-loss compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.³⁵

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2018
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

³⁴ See *M.H.*, *supra* note 27.

³⁵ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. See *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.