

ISSUES

The issues are: (1) whether appellant received an overpayment of \$42,035.43 because OWCP failed to deduct premiums for basic life insurance (BLI) from November 15, 1995 through March 10, 2012, failed to deduct premiums for optional life insurance (OLI) from January 10 through March 5, 2016, and failed to deduct premiums for postretirement basic life insurance (PRBLI) for the period November 15, 1995 through March 5, 2016; (2) whether OWCP properly denied waiver of recovery of the overpayment and (3) whether it properly required repayment of the overpayment by deducting \$1,500.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 3, 1991 appellant, then a 44-year-old special agent/air marshal, filed an occupational disease claim (Form CA-2) alleging that he sustained bacterial endocarditis causally related to factors of his federal employment. He attributed his condition to being deployed in Europe and the Middle East from January 1991 until April 5, 1991. Appellant stopped work on May 13, 1991. OWCP accepted the claim for bacterial endocarditis, pericardial drainage, unspecified hypertensive heart disease without heart failure, aortic valve disorders, heart valve replacement, and benign hypertensive heart disease without heart failure. Appellant underwent authorized heart valve replacement surgeries in July and October 1991 and a heart catheterization and angioplasty with deployment of a stent on April 29, 2006. OWCP paid wage-loss compensation benefits for total disability until he returned to work in 1992.

On November 14, 1995 appellant retired from the employing establishment on disability. A Form SF-50 (Standard Form 50) indicated that he had life insurance coverage under the Federal Employees Group Life Insurance (FEGLI) of BLI plus five multiples.

Appellant, on February 6, 1996, elected to receive workers' compensation from OWCP, effective November 14, 1995, in lieu of retirement benefits from the Office of Personnel Management (OPM). OWCP paid wage-loss compensation benefits for total disability beginning November 15, 1995. It deducted premiums for OLI, but did not deduct premiums for BLI or PRBLI. OWCP placed appellant on the periodic rolls, effective February 4, 1996.

In a form dated April 2, 1996, received by OWCP on February 26, 2016, OPM advised OWCP that appellant had transferred FEGLI enrollment to OWCP, effective November 16, 1995. It advised that he had elected BLI with five multiples and PRBLI with no reduction.

In a February 26, 2016 telephone call, OWCP informed appellant that it had stopped his deductions for premiums for OLI from January 10 through February 6, 2016, but would resume

⁴ Docket No. 95-1680 (issued November 3, 1997).

OLI premium deductions on the following periodic rolls cycle. In a March 8, 2016 e-mail, appellant questioned why OWCP had stopped withholding premiums for his life insurance after January 8, 2016.

OWCP, in a payment plate form dated March 15, 2016, indicated that it was resuming deductions for OLI from appellant's compensation, effective March 6, 2016. In a form dated March 29, 2016, it noted that, according to its procedures, BLI should have been deducted along with PRBLI until the first periodic rolls period after he reached the age of 65, or until March 10, 2012.

By letter dated April 8, 2016, OWCP notified appellant of its preliminary determination that he received a \$42,035.43 overpayment of compensation as it failed to properly deduct life insurance premiums from November 15, 1995 through March 5, 2016. It found that it failed to deduction premiums for BLI from November 15, 1995 through March 10, 2012, failed to deduct premiums for OLI from January 10 through March 5, 2016, and failed to deduct premiums for PRBLI with no reduction from November 15, 1995 through March 5, 2016. OWCP determined that it should have deducted \$4,648.70 for BLI premiums, \$36,641.53 for PRBLI premiums, and \$745.20 for OLI premiums for the above periods. It informed appellant of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that he complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, it 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 prerecoupment hearing.

Counsel, in an April 21, 2016 letter, requested a prerecoupment hearing before an OWCP hearing representative. In an overpayment action request form dated June 8, 2016, he disagreed that the overpayment occurred. Appellant related that he elected BLI with five multiples when he was hired in September 1985, as indicated on his November 14, 1995 SF-50. He did not know of the other options such as PRBLI until informed by OWCP on February 2016. Appellant questioned why he was not advised of any problem for over 21 years and indicated that he only wanted one life insurance policy. He asked that his policy be retroactively reduced to eliminate the overpayment.

By letter dated August 2, 2016, OPM advised OWCP that appellant wished to change his PRBLI election to a 75 percent reduction effective August 1, 2016. In a letter to OWCP dated August 8, 2016, appellant enclosed the August 2, 2016 letter from OPM and related that he only intended to enroll in BLI times five with no reduction.

OWCP benefit statement forms covering pay periods in 2013, 2014, 2015, and 2016 show that OWCP made deductions for life insurance premiums each period of \$415.50. For the pay period March 6 to April 2, 2016, the life insurance premium deduction was \$512.20.

OWCP, on November 15, 2016, informed appellant that it had scheduled a telephone hearing for January 18, 2017. On January 4, 2017 he requested postponement of the hearing due to scheduled surgery. OWCP advised appellant that it could not postpone the hearing as it would not be on the same monthly docket and that it would change the request to a review of the written record.

Appellant, on January 12, 2017, discussed the evidence of record and asserted that a payment history demonstrated that he paid FEGLI premiums of \$71,730.35 from December 14, 1995 to December 2016. He maintained that, if he had died during the period of the overpayment without paying his premiums, OWCP would not have had to pay death benefits and requested that he not be required to repay any overpayment.

Computer records showing appellant's compensation history indicate that OWCP deducted \$71,730.35 in OLI premiums for the period November 15, 1995 through December 10, 2016.

By decision dated March 2, 2017, an OWCP hearing representative, after a review of the written record, found that appellant had received an overpayment of \$42,035.43 as OWCP failed to properly deduct life insurance premiums for BLI from November 15, 1995 through March 10, 2012, for OLI from January 10 through March 5, 2016, and for PRBLI from November 15, 1995 through March 5, 2016. She found that he was denied waiver of recovery of the overpayment, noting as he had not completed a Form CA-20 or submitted any supporting financial documentation. The hearing representative determined that the overpayment should be recovered by withholding \$1,500.00 from continuing compensation payments every 28 days.

On appeal appellant, through counsel, contends that he was not at fault in creating the overpayment. Counsel indicates that he challenged the finding of overpayment and did not request waiver, and further notes that he requested that his policy be retroactively reduced to eliminate the overpayment of compensation. Appellant asserts that benefit statements from OWCP show a monthly deduction for life insurance premiums.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁵ The coverage for BLI 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 BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

December 31, 1989.⁹ However, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his 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 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 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.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

The Board finds that appellant received an overpayment of compensation as OWCP failed to deduct premiums for BLI for the period November 15, 1995 through March 10, 2012

⁹ *Id.* at § 8707(b)(2).

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

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).

¹⁵ *Id.* at § 8102(a).

¹⁶ 20 C.F.R. §§ 10.434-10.437.

and failed to deduct premiums for OLI for the period January 10 through March 5, 2016. The Board finds, however, that the case is not in posture for decision regarding whether an overpayment of compensation occurred because OWCP failed to deduct premiums for PRBLI for the period November 15, 1995 through March 5, 2016.

Appellant retired from the employing establishment on disability effective November 14, 1995. He elected to receive workers' compensation from OWCP beginning that date in lieu of OPM retirement benefits. OWCP paid appellant wage-loss compensation for total disability beginning November 15, 1995. It deducted premiums for OLI, but not premiums for BLI or PRBLI from his compensation benefits.

A November 14, 1995 notification of personnel action, Form SF-50, indicates that appellant elected BLI with the option for five multiples. OWCP, however, did not deduct BLI from his compensation payments from November 15, 1995 through March 10, 2012. In a June 8, 2016 overpayment action request form, appellant confirmed that he elected BLI with five multiples when he retired. OWCP procedures provide that BLI is deducted from compensation until the age of 65.¹⁷ As OWCP failed to properly deduct premiums for BLI from November 15, 1995 through March 10, 2012, appellant received an overpayment of compensation.¹⁸

OWCP further found that appellant received an overpayment of compensation as it failed to deduct premiums for OLI from January 10 through March 5, 2016. It advised him on February 26, 2016 that it had dropped his reductions for OLI from January 10 through February 6, 2016, but had reentered the deductions for the next periodic rolls payment. OWCP resumed deductions for premiums for OLI on March 6, 2016. The Board finds that, as OLI premiums were not deducted from appellant's compensation from January 10 through March 5, 2016, OWCP properly found an overpayment of compensation for this period.¹⁹

OWCP further found that appellant received an overpayment of compensation as it failed to deduct premiums for PRBLI from November 15, 1995 through March 5, 2016. In a form dated April 2, 1996, received by OWCP on February 26, 2016, OPM advised that he had elected BLI with five multiples and PRBLI with no reduction. OWCP thus found that appellant had received an overpayment of compensation for the period November 15, 1995 through March 5, 2016 based on its failure to deduct PRBLI premiums.

The Board finds that OWCP failed to present adequate facts and findings to support its determination that appellant received an overpayment for the period November 15, 1995 through March 5, 2016 due to its failure to deduct premiums for PRBLI. The Board notes that the record does not contain any evidence that he signed a document electing PRBLI with no reduction. OPM's April 2, 1996 letter indicates that appellant enrolled in that option commencing November 16, 1995, but provides no supporting documentation establishing such enrollment.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, 2.0901.15(c) (February 2013).

¹⁸ See *M.H.*, Docket No. 16-1403 (issued December 22, 2016); *J.L.*, Docket No. 16-0778 (issued November 2, 2016).

¹⁹ See *S.B.*, Docket No. 16-1795 (issued March 2, 2017); *B.B.*, Docket No. 16-0135 (issued March 9, 2016).

The record contains no signed election form documenting which coverage he actually elected. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after retirement.²⁰

In *N.J.*,²¹ the Board remanded the case to OWCP for further development because the evidence of record did not establish an election of PRBLI at no reduction. Similarly, in this case the record does not contain evidence of such election by appellant. It remains unclear why premiums for PRBLI at no reduction should have been deducted from his compensation as of November 16, 1995 as there is no documentation of record establishing that he actually elected that option.

As OWCP has not factually established that appellant elected PRBLI with no reduction, it has not demonstrated that he received an overpayment of compensation based on its failure to deduct premiums for PRBLI from November 15, 1995 through March 5, 2016. The case will be remanded to OWCP. On remand, it should obtain from OPM the executed election form completed by appellant prior to determining whether he received an overpayment of compensation due to its failure to deduct PRBLI premiums.²² OWCP should then recalculate the amount of the overpayment that he received due to its failure to deduct premiums for BLI from November 15, 1995 through March 10, 2012 and OLI from January 10 through March 5, 2016, and calculate the amount of the overpayment, if any, due to its failure to deduct premiums for PRBLI. After such further development as OWCP deems necessary, it should issue an appropriate decision.²³

On appeal appellant asserts that OWCP deducted life insurance premiums for his compensation payments. As explained, OWCP did deduct premiums for OLI from his compensation benefits beginning November 15, 1995.

CONCLUSION

The Board finds that appellant received an overpayment of compensation as OWCP failed to deduct premiums for BLI from November 15, 1995 through March 10, 2012 and OLI from January 10 through March 5, 2016, but that the case is not in posture for decision regarding whether he received an overpayment due to OWCP's failure to deduct premiums for PRBLI from November 15, 1995 through March 5, 2016.

²⁰ See *J.D.*, 15-0481 (issued May 2, 2016); *R.W.*, Docket No. 11-1303 (issued January 9, 2012).

²¹ Docket No. 13-2164 (issued April 18, 2014).

²² See *J.D.*, *supra* note 20.

²³ As the Board is remanding the case for further development of the issues of fact and amount of overpayment, the issues of waiver and recovery of the overpayment are not in posture for decision at this time. See *S.G.*, Docket No. 14-0769 (issued December 9, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 29, 2018
Washington, DC

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

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

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