

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

S.P., Appellant)	
)	
and)	Docket No. 17-1888
)	Issued: July 18, 2018
U.S. POSTAL SERVICE, LOS ANGELES)	
DISTRIBUTION CENTER, Bell, CA,)	
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 6, 2017 appellant filed a timely appeal from the August 10, 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 the claim.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$766.51 for the period May 28, 2016 through April 1, 2017; (2) whether OWCP properly denied waiver of recovery of the overpayment; and

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued its August 10, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from reviewing evidence not before OWCP at the time of the August 10, 2017 decision for the first time on appeal. *Id.*

(3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On January 21, 2015 appellant, then a 53-year-old equipment operator/mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained a left elbow injury while performing repetitive work activities.³

OWCP accepted that appellant sustained left medial epicondylitis, left lateral epicondylitis, and sprain of left elbow and forearm. Appellant was placed on limited duty. She stopped work on June 4, 2015 as the employing establishment could no longer accommodate her restrictions.⁴ OWCP paid wage-loss compensation benefits. Beginning September 20, 2015, it paid appellant disability compensation on the periodic compensation rolls.

In an October 2, 2015 letter, OWCP explained the conditions under which appellant would be paid compensation. It noted that deductions were taken out for health benefits, basic life insurance, and optional life insurance premiums.

In a November 1, 2016 letter to OWCP, an Office of Personnel Management (OPM) customer service specialist advised that, as a compensationoner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic and optional life insurance. The specialist noted, "The final base salary on which FEGLI is based is \$57,290.00. Please deduct for Code Z3: Basic; Option A-Standard; Option B - 3 times salary - No reduction; and Option C Family - 3 times salary - No reduction. Post[r]etirement election is No Reduction. Commencing date for the [p]ost[r]etirement deductions is May 28, 2016. Basic and optional coverage premiums begin on OWCP commencing date." A copy of appellant's September 12, 2016 signed SF 2818, Continuation of Life Insurance Coverage as an Annuitant or Compensationoner under FEGLI Program, was provided.

Upon review of the fiscal record, OWCP determined that it had failed to deduct the appropriate premiums for basic life insurance, optional life insurance, and postretirement life insurance for the period May 28, 2016 through April 1, 2017.

On April 28, 2017 OWCP notified appellant of its preliminary determination of an overpayment of compensation in the amount of \$1,311.73 because it had failed to make proper insurance deductions from her continuing benefits. It noted that, as she had elected the optional postretirement basic life insurance coverage and optional life insurance coverage at the no

³ OWCP assigned the present claim File No. xxxxxx448.

⁴ Appellant filed another Form CA-2, occupational disease claim, on July 28, 2015. OWCP assigned File No. xxxxxx788 and accepted the claim for other affections of right shoulder region, complete rotator cuff rupture, and other articular cartilage disorders, right shoulder. Appellant underwent OWCP-approved arthroscopic surgery on December 28, 2015. OWCP File Nos. xxxxxx788 and xxxxxx448 have been administratively combined, with File No. xxxxxx448 serving as the master file.

reduction levels, it had under-deducted premiums from May 28, 2016 through April 1, 2017.⁵ OWCP found that total deductions of \$2,292.36 should have been made, but as total actual deductions were \$980.63, an overpayment of compensation in the amount of \$1,311.73 had occurred. It also made a preliminary determination that appellant was not at fault in the creation of the overpayment. OWCP advised her that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It informed appellant that she could submit additional evidence in writing or at a precoupment hearing, but that a precoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP also requested that she complete the enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days.

On May 11, 2017 appellant completed the overpayment recovery questionnaire. She submitted copies of her benefit statement and provided a breakdown of her monthly payments. Appellant indicated a total monthly income of \$4,114.19 and total monthly expenses of \$4,023.00.

In a June 13, 2017 conference call, an OWCP claims examiner advised appellant that proof of her husband's income was needed as well as verification of bills being paid on a monthly basis. Appellant was accorded two weeks or until June 27, 2017 to submit the necessary financial information.

On June 26, 2017 OWCP received documentation pertaining to appellant's household income and expenses. Appellant's husband received social security benefits in the amount of \$823.00 per month. Appellant received \$3,364.19 from OWCP every 28 days. Bills which verified monthly expenses amounted to \$3,100.21. This included rent \$2,552.00, IRS \$50.00, Spectrum (TV, Internet, Cable) \$216.39; Edison (utility) \$131.36, Data Boost (\$35.00 and \$52.00); So Cal Gas \$38.46, car payment (unclear), car insurance \$25.00, and two collection notices.

In an August 10, 2017 worksheet, OWCP indicated that appellant was underpaid for the period June 4 through September 4, 2015 in the amount of \$545.22. It noted that this amount should be absorbed by the overpayment.⁶

By decision dated August 10, 2017, OWCP finalized the overpayment of compensation. It explained how appellant was underpaid in the amount of \$545.22 during the period June 4 through September 4, 2015. OWCP then subtracted the \$545.22 amount she was underpaid for the period June 4 through September 4, 2015 from the original \$1,311.73 overpayment for no deduction of

⁵ OWCP noted the actual deduction for the period May 2 through December 10, 2016 was \$124.53 for basic life insurance premiums and \$495.46 for optional life insurance premiums and for the period December 11, 2016 through April 1, 2017 were \$72.00 for basic life insurance and \$288.64 for optional life insurance with no deductions for postretirement basic life insurance, for a total actual deduction amount of \$196.53 for basic life insurance and \$784.10 for optional life insurance or total actual deductions of \$980.63. It found that the correct FEGLI deductions for the period May 28 through December 10, 2016 should have been \$126.64 for basic life insurance premiums and \$503.20 for optional life insurance premiums with a postretirement life insurance amount of \$830.00. Correct FEGLI deductions for the period December 11, 2016 through April 1, 2017 should have been \$72.00 for basic life insurance premiums, \$288.64 for optional life insurance premiums and \$471.88 for postretirement life insurance premiums. The total deductions which should have been paid amounted to \$198.64 plus \$791.84 plus \$1,301.88 or \$2,292.36.

⁶ OWCP advised that, for the period June 4 through September 4, 2015, appellant had received \$12,064.82 in compensation, but she should have been paid \$12,610.04.

FEGLI to find a new overpayment of \$766.51. It found that, although appellant was not at fault in the creation of the overpayment, the overpayment was not subject to waiver of recovery because she had not provided sufficient justification to support a basis for granting waiver of recovery of the overpayment. OWCP requested that she forward the total amount of the overpayment or \$100.00 would be taken for her continuing payments every 28 days until the overpayment was absorbed.

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.⁷ The coverage for basic life insurance is effective unless waived,⁸ and premiums for basic and optional life coverage are withheld from the employee's pay.⁹ 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.¹⁰ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.¹¹ However, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his or her compensation.¹²

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 or her compensation, so that his or her 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

⁷ 5 U.S.C. § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

¹¹ *Id.* at § 8707(b)(2).

¹² *Id.* at § 8706(b)(3)(B). See *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that 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 of compensation was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹³

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 remains in effect.¹⁴ Any employee who does not file a Life Insurance Election 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.¹⁵ 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 the OPM upon discovery of the error.¹⁶

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.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$766.51 for the period May 28, 2016 through April 1, 2017.

The Board finds that appellant has received an overpayment of compensation for the period May 28, 2016 through April 1, 2017 as OWCP failed to deduct the appropriate premiums for basic life insurance, optional life insurance, and postretirement life insurance. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance at whatever option she had selected.¹⁹ The record contains documentation reflecting her election of the optional postretirement basic life insurance at no reduction, as well as basic and optional coverage premiums at no reduction.

The Board further finds, however, that OWCP has not properly determined the amount of the overpayment.

¹³ See *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁴ 5 C.F.R. § 870.504(a)(1).

¹⁵ *Id.* at 504(b).

¹⁶ 5 U.S.C. § 8707(d); see also *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁷ *Id.* at § 8102(a).

¹⁸ *Id.* at § 8129(a).

¹⁹ See *supra* note 15.

OWCP determined that appellant received an overpayment of compensation in the amount of \$1,311.73 for no deduction of FEGLI for the period May 28, 2016 through April 11, 2017. It, however, offset this amount with the under withholding of \$545.22 which it found that she was due for the period June 4 through September 4, 2015 as she had been paid at a lower weekly rate. The Board has held that such offsets may circumvent established legal procedures and protections if the claimant is entitled to consideration of waiver.²⁰ Such offsets are, therefore, not allowed, as they permit an unrestricted recovery of the offset portion of the overpayment without regard to the relevant factors set forth in 20 C.F.R. § 10.441(a)²¹ which denies administrative due process with respect to the amounts offset.²²

The case will, therefore, be remanded for OWCP to properly calculate the entire amount of the overpayment of compensation and to consider waiver of the entire amount of the overpayment. After conducting such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant received an overpayment of compensation as FEGLI premiums were not properly deducted during the period May 28, 2016 through April 1, 2017. However, the Board finds that the case is not in posture for decision as to the amount of overpayment.²³

²⁰ *R.H.*, Docket No. 17-1933 (issued February 15, 2018).

²¹ This section provides that, in collecting an overpayment of compensation, OWCP shall decrease later payment of compensation by 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.

²² *Diana L. Booth*, 52 ECAB 370, 373 (2001) (finding that OWCP's offset practice denied administrative due process rights with respect to the amount offset); *see also B.T.*, Docket No. 13-1619 (issued February 24, 2014).

²³ As OWCP has not established the amount of overpayment, the issues of waiver and recovery are moot.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed as to fact of overpayment. The decision is set aside as to the amount of the overpayment and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 18, 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