

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

B.B., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Gaithersburg, MD,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-1733
Issued: March 26, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2017 appellant filed a timely appeal from a July 24, 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 case.

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$846.72 because Federal Employees' Group Life Insurance (FEGLI) premiums were not deducted from FECA compensation payments for the period April 3 through October 15, 2016; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$100.00 every 28 days from appellant's continuing compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

Under this master file, OWCP File No. xxxxxx047, and its 10 subsidiaries, there have been six traumatic injuries to appellant's back accepted by OWCP including a lumbar strain on December 19, 1981 (File No. xxxxxx669); acute low back strain, cervical strain, and psychogenic pain disorder on December 17, 1985 (File No. xxxxxx047); aggravation of degenerative disc disease C5-6 and C6-7 on May 10, 1988 (File No. xxxxxx048); cervical strain, lumbar strain, and herniated C6-7 disc on November 28, 1988 (File No. xxxxxx412); lumbar strain on June 19, 1999 (File No. xxxxxx644); and aggravation of preexisting cervical spine conditions on November 23, 2005 (File No. xxxxxx891).³ The record indicates that appellant received intermittent wage-loss compensation, and as of February 14, 2010, she was working four hours daily and receiving compensation for the remaining four hours on the periodic rolls.

Appellant's modified position was withdrawn effective July 23, 2013, and OWCP accepted a recurrence of disability effective July 24, 2013. She has received total disability compensation on the periodic rolls since that date.

By letter dated June 1, 2016, OWCP noted that appellant had reached her 65th birthday on March 12, 2016 and informed her of the life insurance options available to her. It attached a FEGLI election form which included directions to send the completed form to the Office of Personnel Management (OPM), which would notify OWCP of her election. In a June 15, 2016 letter, OPM notified OWCP that appellant had elected FEGLI Option B 2X No Reduction, effective April 1, 2016. The record indicates that commencing October 16, 2016 deductions were made from appellant's FECA compensation for the optional life insurance (OLI) Code K0 (2X No Reduction).

On March 22, 2017 OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$846.72 because deductions for life insurance had not been taken for the period April 3 through October 15, 2016 due to an administrative error. Both computer print-outs and an overpayment worksheet confirm that OLI premiums were not deducted and note an OLI premium of \$846.72 for this period. OWCP found appellant without fault and attached an overpayment action request form and overpayment recovery questionnaire (OWCP-20). Appellant disagreed that the overpayment occurred and requested a telephone conference. She submitted an incomplete overpayment recovery questionnaire. On June 16, 2017 appellant submitted additional financial information. A completed overpayment recovery questionnaire listed monthly income of \$2,566.00 in FECA benefits. Appellant itemized monthly expenses totaling \$2,617.00.

² Docket No. 00-2528 (issued April 12, 2002); Docket No. 06-0263 (issued November 22, 2006); Docket No. 09-2258 (issued June 28, 2010); Docket No. 15-0825 (issued July 29, 2015); Docket No. 16-0135 (issued March 6, 2016).

³ The record also indicates that appellant has additional accepted claims for bilateral tenosynovitis of the hand/wrist, asthma, and a panic disorder.

A telephone conference was held on June 20, 2017. The claims examiner noted that he advised appellant that she had not submitted documentation to support her claimed expenses and indicated that she maintained it would be a hardship to repay the overpayment. On June 25, 2017 appellant submitted financial information regarding some utilities, a credit card, and medical bills.

On July 24, 2017 OWCP finalized the overpayment of compensation in the amount of \$846.72. It found appellant without fault, but denied waiver of recovery of the overpayment. OWCP noted that her periodic FECA compensation of \$2,566.04 every 28 days, when converted to monthly compensation, yielded monthly income of \$2,779.88. It also noted that her itemized monthly expenses totaled \$2,577.00 rather than the \$2,617.00 claimed, which indicated that her monthly income exceeded monthly expenses by more than \$200.00. Repayment was set at \$100.00 each 28 days from her continuing FECA compensation.

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.⁴ The coverage for basic life insurance is effective unless waived,⁵ and premiums for basic and optional life coverage are withheld from the employee's pay.⁶ 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 would be used to withhold premiums from his or her annuity or compensation payments.⁷ Basic life insurance coverage is continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁸ however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his or her compensation.⁹

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 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

⁴ 5 U.S.C. § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *Id.* at § 8706.

⁸ *Id.* at § 8707(b)(2).

⁹ *Id.* at § 8706(b)(3)(B); *see S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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

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.¹¹ 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.¹² 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.¹³

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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$846.72.

OWCP found that an overpayment of compensation in the amount of \$846.72 was created for the period April 3 through October 15, 2016 because it failed to properly deduct premiums for OLI. The basis for this finding includes OPM's June 15, 2016 letter notifying OWCP that appellant had elected OLI Code K0 (2X No Reduction). The record includes computer printouts showing that no deductions had been made for OLI for seven compensation periods beginning April 3, 2016. A payment report indicated that the OLI premium deduction was reinstated effective October 16, 2016.

The Board therefore finds that, as the OLI premiums were not deducted from appellant's FECA compensation for the period April 3 through October 16, 2016, OWCP properly found an overpayment of compensation in the amount of \$846.72.¹⁶

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

¹¹ 20 C.F.R. § 870.504(a)(1).

¹² *Id.* at § 870.504(b).

¹³ *Id.* at § 8707(d); see *S.B.*, *supra* note 9.

¹⁴ *Id.* at § 8102(a).

¹⁵ *Id.* at § 8129(a).

¹⁶ See *S.B.*, *supra* note 9.

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.”¹⁷ 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 of an overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁸ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁹

ANALYSIS -- ISSUE 2

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

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.²⁰

In order for appellant to establish that repayment of the overpayment would defeat the purpose of FECA, she must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP’s procedures.²¹

Based on the financial information appellant submitted, the hearing representative properly calculated that appellant’s monthly income totaled \$2,779.88 and that her itemized household expenses totaled \$2,577.00, which yielded a monthly surplus in excess of \$200.00. OWCP procedures provide that an individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does

¹⁷ 5 U.S.C. § 8129.

¹⁸ Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current or ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. 20 C.F.R. § 10.436. 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. 20 C.F.R. § 10.437.

¹⁹ 20 C.F.R. § 10.438.

²⁰ *Supra* note 17.

²¹ *Supra* note 18.

not exceed monthly expenses by more than \$50.00.²² As appellant's monthly income exceeded her monthly expenses by more than \$50.00, the Board finds that OWCP properly determined that recovery of the overpayment would not defeat the purpose of FECA.²³

The Board further finds that the evidence of record also demonstrated that repayment of the overpayment would not be against equity and good conscience. Although appellant maintained that it would be a hardship to repay the overpayment amount, she submitted no evidence that she had relied upon the incorrect payments to her detriment. Moreover, the financial information submitted does not substantiate that she would experience severe financial hardship attempting to repay the debt.

Because appellant has failed to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that she has failed to show that OWCP abused its discretion by refusing to waive the recovery of the \$846.72 overpayment.²⁴

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.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP gave due regard to the relevant factors noted above in setting a rate of recovery of \$100.00 per compensation period.

The record indicates that appellant's monthly income exceeds her reported monthly expenses by more than \$200.00 per month. OWCP therefore did not abuse its discretion in finding that appellant should repay the overpayment at the rate of \$100.00 per compensation period.²⁶

²² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6a(1)(b) (June 2009).

²³ *Id.*; see *P.G.*, Docket No. 16-1671 (issued October 4, 2017).

²⁴ See *J.B.*, Docket No. 16-0796 (issued August 19, 2016).

²⁵ 20 C.F.R. § 10.441; see *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

²⁶ *N.S.*, Docket No. 14-2081 (issued February 12, 2015).

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$846.72, and that OWCP properly denied waiver of recovery and that it properly required recovery of the overpayment by deducting \$100.00 every 28 days from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 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