

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,314.04 for the period October 16, 2016 through April 29, 2017 based upon an adjustment of Federal Employees' Group Life Insurance (FEGLI) post-retirement basic life insurance (PRBLI); (2) whether appellant was at fault in the creation of the \$1,314.04 overpayment of compensation; (3) whether OWCP properly determined that the \$1,314.04 overpayment of compensation would be recovered by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days; (4) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,660.00 for the period May 3, 2003 through April 29, 2017 due to a under withholding of PRBLI premiums; (5) whether appellant was at fault in the creation of the \$31,660.00 overpayment of compensation; (6) whether OWCP properly determined that the \$31,660.00 overpayment of compensation would be recovered by deducting \$200.00 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On May 8, 2002 appellant, then a 50-year-old revenue officer group manager, filed an occupational disease claim (Form CA-2) alleging neck pain and bilateral carpal tunnel syndrome causally related to factors of her federal employment. On August 26, 2002 OWCP accepted her claim for bilateral carpal tunnel syndrome.

OWCP paid appellant wage-loss compensation benefits on the periodic rolls commencing November 5, 2002. Deductions from FECA benefits were made for optional life insurance (OLI), \$47.80 every 28 days commencing November 3, 2002. In a November 5, 2002 letter, OWCP advised appellant, "If you have optional life insurance and/or health benefits coverage, but no deduction for it is shown above, contact this office immediately. You are still responsible for these premiums."

In a letter to OWCP dated October 31, 2003, the Office of Personnel Management (OPM) noted that it could not certify information about appellant's health benefits and life insurance coverage as she had elected to receive FECA benefits and the employing establishment had not transferred the enrollment. It indicated that appellant was eligible to continue basic life insurance (BLI) with no reduction and had elected additional optional, and family optional.

On August 19, 2016 OWCP notified appellant that she had the option to continue her OLI Option B and Option C beyond age 65.

In letters dated December 19, 2016 and December 12, 2017, OPM indicated that appellant was eligible to continue FEGLI with no reduction in basic, Option B, and Option C commencing May 3, 2003. The commencement date for the PRBLI deduction was May 3, 2003. OPM provided a form that appellant had completed on October 16, 2002 which indicated that she wished to have PRBLI with no reduction, Option A, standard optional insurance, and Option B, additional optional insurance. Appellant also selected Option C, family optional insurance with no reduction. On November 29, 2016 appellant elected to freeze her Option B life insurance at the value as of age 65.

Upon review of the fiscal record, OWCP determined that appellant received a \$1,314.04 overpayment of compensation from October 16, 2016 through April 29, 2017, *i.e.*, \$187.72 OLI premiums x 7 pay periods.

On June 16, 2017 OWCP notified appellant of its preliminary determination that an overpayment of compensation in the amount of \$1,314.04 was created for the period October 16, 2016 through April 29, 2017. It determined that the overpayment occurred “because you did not notify [OWCP] that your optional life insurance stopped after the age 65 and your PRBLI was adjusted.” OWCP found that she was at fault in the creation of this overpayment as she had accepted a payment which she knew or should have known was incorrect. It provided the calculations of appellant’s overpayment noting “because you did not notify [OWCP] that your optional life insurance stopped after the age 65 and your PRBLI was adjusted” effective October 16, 2016 after her OLI stopped. OWCP found that appellant’s deduction for OLI Option B was \$187.72 per 28-day wage-loss compensation pay periods, and that there were seven pay periods during the overpayment period resulting in an overpayment of \$1,314.04. It again directed appellant to complete an overpayment recovery questionnaire (Form OWCP-20), and advised her of her appeal rights.

Upon further review of the fiscal record, OWCP also determined that it had failed to deduct the appropriate premiums for PRBLI beginning May 3, 2003.

On June 16, 2017 OWCP notified appellant of its preliminary determination that an overpayment of compensation in the amount of \$31,660.03 was created for the period May 3, 2003 through April 29, 2017 as she had elected to change her PRBLI effective May 3, 2003 and it had failed to make proper insurance deductions from her continuing benefits. It noted that it advised appellant in her November 5, 2002 payment of wage-loss compensation letter that, if she had OLI or health benefits coverage, but no deduction was shown, to contact OWCP immediately. OWCP found that she was at fault in the creation of the overpayment as she did not contact it when her FEGLI deductions were not adjusted and therefore knew or should have known that her compensation payments were incorrect.

OWCP provided a calculation of the amount of overpayment noting that appellant’s PRBLI was \$170.68 every 28 days from May 3, 2003 through December 17, 2011 or \$6.10 per day, resulting in 15 days multiplied by \$6.10 from May 3 through 17, 2003 or \$91.50, and 115 28-day periods multiplied by \$170.68 from May 18, 2003 through December 17, 2011 or \$19,628.20. For the single 28-day period from December 18, 2011 through January 14, 2012, the PRBLI was \$175.24, while from January 15, 2012 through August 23, 2014 the PRBLI was \$179.81 multiplied by 34 28-day periods or \$6,113.54. For the period August 24, 2014 through December 12, 2015 the PRBLI was \$154.01 multiplied by 17 28-day periods or \$2,618.17, and for the single 28-day period from December 13, 2015 through January 9, 2016 the PRBLI was \$158.85. For the period January 10, 2016 through April 29, 2017 the PRBLI was \$169.09 multiplied by 17 28-day periods or \$2,874.53. OWCP added the various sums (\$91.50 + \$19,628.20 + \$175.24 + \$6,113.54 + \$2,618.17 + \$158.85 + \$2,874.53) to reach a total of \$31,660.03 for the total overpayment of compensation. It directed appellant to complete an overpayment recovery questionnaire, (Form OWCP-20) and advised her of her appeal rights.

In a telephone call to OWCP on July 5, 2017, appellant alleged that she was not mentally competent at all times. OWCP's claims examiner requested medical documentation to support this allegation.

By decision dated July 31, 2017, OWCP found that appellant had received an overpayment of compensation in the amount of \$1,314.04 for the period October 16, 2016 through April 29, 2017. It determined that she was at fault in the creation of the overpayment as she had accepted a payment which she knew or reasonably should have known was incorrect. OWCP further determined that the overpayment would be recovered by withholding \$50.00 from future compensation payments, every 28 days, commencing August 20, 2017.

By a separate decision dated July 31, 2017, OWCP found that appellant had received an overpayment of compensation in the amount of \$31,660.03 for the period May 3, 2003 through April 29, 2017. It determined that she was at fault in the creation of this overpayment as she had accepted a payment that she knew or reasonably should have known was incorrect. OWCP further determined that the overpayment would be collected by withholding \$200.00 from appellant's continuing compensation payments, every 28 days, beginning August 20, 2017.

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of 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.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

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for a decision regarding whether appellant received an overpayment of compensation in the amount of \$1,314.04.

OWCP found that appellant was overpaid "because [she] did not notify [OWCP] that [her] optional life insurance stopped after the age 65 and your PRBLI was adjusted." In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.⁶ OWCP's procedures further specify that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the

⁴ 5 U.S.C. § 8129.

⁵ 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

⁶ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons. *D.S.*, Docket No. 16-0712 (issued October 13, 2017).

disallowance of the benefit and the evidence necessary to overcome the defect of the claim.”⁷ These requirements are supported by Board precedent.⁸

The Board finds that OWCP did not adequately explain how an overpayment was created. The Board noted that appellant’s OLI stopped after she reached 65 years old and her PRBLI was adjusted effective October 16, 2016. The record, however, does not support this contention. Rather, appellant had elected to continue her Option B OLI after age 65. The Federal (FECA) Procedure Manual explains that the automatic payment system automatically stops all life insurance deductions once the claimant reaches 65, unless as in this case, the claimant has elected to “freeze” her optional insurance.⁹ It is unclear from OWCP’s decision whether an overpayment resulted because appellant’s OLI deductions should have stopped and her PRBLI deduction should have changed or whether her OLI deductions were inadvertently stopped through the automatic payment system, resulting in an overpayment. Furthermore, OWCP alleged that the change in appellant’s OLI resulted in an adjustment of her PRBLI. However, it did not explain how the adjustment of her PRBLI was relevant to its overpayment calculation. OWCP merely noted the amount of her OLI withholding for the period October 16, 2016 through April 29, 2017 and did not address any aspect of her PRBLI election. Finally, in its separate overpayment decision discussed *infra*, it provided the calculations for the under withholding of appellant’s PRBLI from May 3, 2003 through April 29, 2017 which encompasses the period October 16, 2016 through April 29, 2017 at issue in this \$1,314.04 overpayment decision. The record does not provide a basis for an additional change in appellant’s PRBLI withholding amount for the same period and does not explain how this would result in an additional overpayment amount.

As such, the decision below does not contain findings of fact and a statement of reasons as required pursuant to 20 C.F.R. § 10.126 for final OWCP decisions. Accordingly, the July 31, 2017 decision finding an overpayment of compensation in the amount of \$1,314.04, shall be set aside and the case is remanded to OWCP for further development regarding the claimed \$1,314.04 overpayment of compensation.¹⁰ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

LEGAL PRECEDENT -- ISSUE 4

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.¹² The coverage for basic life insurance is effective unless waived,¹³ and premiums for basic and optional life coverage are

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

⁸ See *D.S.*, Docket No. 16-0721 (issued October 13, 2017); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

⁹ Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Life Insurance*, Chapter 5.0401.8d (August 2004).

¹⁰ *D.S.*, *supra* note 8.

¹¹ In light of the Board’s disposition in Issue 1, Issues 2 and 3 are rendered moot.

¹² 5 U.S.C. § 8702(a).

¹³ *Id.* at § 8702(b).

withheld from the employee's pay.¹⁴ 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.¹⁵ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.¹⁶ 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.¹⁷

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 to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹⁸

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.¹⁹ 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.²⁰ 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.²¹

¹⁴ *Id.* at § 8707.

¹⁵ *Id.* at § 8706.

¹⁶ *Id.* at § 8707(b)(2).

¹⁷ *Id.* at § 8706(b)(3)(B). *See S.P.*, Docket No. 17-1888 (issued July 18, 2018); *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected PRBLI 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).

¹⁸ *See S.P.*, *supra* note 17; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁹ 5 C.F.R. § 870.504(a)(1).

²⁰ *Id.* at § 870.504(b).

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

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.²² 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.²³

ANALYSIS -- ISSUE 4

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,660.00 for the period May 3, 2003 through April 29, 2017.

The Board finds that OWCP presented adequate findings of fact and a statement of reasons to support its determination that appellant received an overpayment of compensation in the amount of \$31,660.00 for the period May 3, 2003 through April 29, 2017. The record contains the signed form appellant completed on October 16, 2002 which indicated her election of PRBLI with no reduction.²⁴ OWCP failed to properly deduct any premiums for PRBLI, thereby creating the \$31,660 overpayment. It explained to appellant how the overpayment occurred in its preliminary determination of overpayment.²⁵ Details were provided as to the 28-day premium that should have been deducted during each pay period from May 3, 2003 through April 29, 2017.

On appeal, appellant disputed the amount of the overpayment. The Board finds that OWCP provided a clear and detailed account of the fact and amount of the overpayment. As OWCP had failed to deduct any PRBLI premiums for the period May 3, 2003 through April 29, 2017 appellant was overpaid compensation benefits in the amount of \$31,660.00. The Board finds that OWCP properly determined the fact and amount of this overpayment.²⁶

LEGAL PRECEDENT -- ISSUE 5

A waiver of recovery is not possible if the claimant is at fault in the creation of the overpayment.²⁷ A claimant who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect. Whether or not an individual was at fault depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the

²² *Id.* at § 8102(a).

²³ *J.C.*, Docket No. 17-1791 (issued February 23, 2018).

²⁴ *Compare D.T.*, Docket No. 17-0901 (issued January 29, 2018) (finding that OWCP had not established an overpayment without a signed form supporting the claimant's selection of PRBLI).

²⁵ *L.K.*, Docket No. 17-1393 (issued March 20, 2018).

²⁶ *E.H.*, Docket No. 15-0848 (issued July 6, 2016).

²⁷ *P.H.*, Docket No. 13-0642 (issued August 12, 2013)

complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.²⁸

ANALYSIS -- ISSUE 5

The Board finds that OWCP improperly found appellant at fault in the creation of the overpayment of compensation in the amount of \$31,660.00 for the period May 3, 2003 through April 29, 2017.

In a November 5, 2002 letter, OWCP notified appellant that she had optional life insurance and/or health benefits coverage, but if no deduction was shown to contact it immediately. It further advised that she was still responsible for these premiums. OPM's form dated October 16, 2002 confirmed appellant's election of PRBLI, but withholdings did not commence until April 29, 2017. Thereafter, OWCP found that appellant was at fault in the creation of the overpayment as she accepted payments that she knew or should have known to be incorrect.

The Board finds that OWCP improperly determined that appellant was at fault in the creation of the overpayment. According to OWCP procedures, a claimant should always be found without fault if the overpayment results from the under withholding of health or life insurance premiums, unless the claimant had actual knowledge of the calculation error.²⁹ Under the circumstances of this case, the Board finds that OWCP failed to establish that appellant actually knew of the calculation error which resulted in the overpayment of compensation for the period May 3, 2003 through April 29, 2017.³⁰ Consequently, the case will be remanded so that OWCP can consider whether she is entitled to waiver of recovery.³¹

CONCLUSION

The Board finds the case not in posture for decision with regard to whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,314.04 for the period October 16, 2016 through April 29, 2017. The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$31,660.00 for the period May 3, 2003 through April 29, 2017 due to a under withholding of PRBLI. The case is in not in posture for a decision, however, with regard to whether OWCP properly determined that appellant was at fault in the creation of the \$31,660.00 overpayment of compensation.

²⁸ *Id.*

²⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009).

³⁰ *Compare C.R.*, Docket No. 16-1241 (issued June 15, 2017) (the Board found that OWCP had established actual knowledge by communications from appellant relative to the calculation error).

³¹ *See P.H.*, *supra* note 27; *J.L.*, Docket No. 13-132 (issued June 6, 2013). In light of the Board's disposition in Issue 5, Issue 6 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2017 decision concerning the \$1,314.04 overpayment of compensation is set aside. The July 31, 2017 decision concerning the \$31,660.00 overpayment of compensation is affirmed in part and set aside in part. The case is remanded to OWCP for further action consistent with this decision.

Issued: October 19, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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