

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
PROCESSING & DISTRIBUTION CENTER,)
Fresno, CA, Employer)

**Docket No. 18-1284
Issued: April 15, 2019**

Appearances:

*Zedie E. Ramage, Jr., for the appellant¹
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 June 13, 2018 appellant, through his representative, filed a timely appeal from a December 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,006.95 for the period August 6, 2016 through April 1, 2017, for which he was without fault; (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On June 17, 2015 appellant, then a 66-year-old postal clerk, filed an occupational disease claim (Form CA-2) for a bilateral shoulder rotator cuff and labral tear, and severe cervical and right lower leg and ankle conditions that were caused and aggravated by his repetitive work duties. He first became aware of his conditions on October 8, 2012 and of their relationship to his federal employment on April 23, 2015.

On July 23, 2015 OWCP accepted appellant's claim for temporary aggravation of right ankle degenerative joint disease, bilateral shoulder degenerative arthritis (acromioclavicular joint, glenohumeral joint), bilateral rotator cuff tear (shoulder), and bilateral labral tear (shoulder). On July 7, 2015 appellant underwent an authorized arthroscopic left shoulder rotator cuff repair, extensive glenohumeral joint debridement, and subacromial decompression, which was performed by Dr. Peter T. Simonian, an attending Board-certified orthopedic surgeon.⁴ OWCP paid appellant total disability compensation on the supplemental rolls commencing August 24, 2015.

In a November 28, 2016 letter, the Office of Personnel Management (OPM) notified OWCP that appellant had elected post-retirement basic life insurance (PRBLI) coverage with no reduction, effective August 6, 2016. It noted that his adjusted annual salary on which life insurance deductions was based increased to \$57,472.00. OWCP subsequently paid appellant disability compensation on the periodic rolls as of April 2, 2017.

By notice dated April 12, 2017, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$1,006.95 because PRBLI

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the December 15, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

⁴ Subsequently, on November 30, 2017 Dr. Simonian performed authorized arthroscopic left shoulder debridement of the anterior superior labral tear and synovitis of the glenohumeral joint, subacromial decompression revision, and a corticosteroid injection of the glenohumeral joint.

premiums had not been deducted from his compensation payments for the period August 6, 2016 through April 1, 2017. It provided a calculation of the overpayment, noting that he was not at fault in its creation. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it notified him 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 prerecoumment hearing.

On May 19, 2017 OWCP received an overpayment action request form, dated May 10, 2017, in which appellant checked a box requesting a prerecoumment hearing. Appellant also checked boxes indicating that he disagreed with the fact and amount of the overpayment, believed the overpayment occurred through no fault of his own, and requested waiver of recovery of the overpayment. He further contended that he had nothing to do with the overpayment. No evidence was received with appellant's request form and he did not submit an overpayment recovery questionnaire.

During a prerecoumment hearing held on October 13, 2017, appellant's representative asserted that no overpayment had occurred because basic life insurance for postal employees was free according to section 351 of the Employee Labor Relations Manual. Appellant's witness, A.A., provided testimony regarding his financial situation, including his monthly income and monthly expenses. The hearing representative requested that appellant submit supporting financial documents within 30 days. No additional information was received.

By decision dated December 15, 2017, an OWCP hearing representative finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$1,006.95 for the period August 6, 2016 through April 1, 2017, for which he was without fault. She indicated that he had not submitted the requested financial information to justify waiving the recovery of the overpayment. The hearing representative directed recovery of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the additional coverage options.⁵ The coverage for basic life insurance is effective unless waived,⁶ 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 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.⁸ Basic insurance 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 optional life insurance 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 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 2 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 1 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 remains in effect.¹² 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.¹³ When an underwithholding 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

⁹ *Id.* at § 8707(b)(2).

¹⁰ *Id.* at § 8706(b)(3)(B); *see B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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 *Supra* note 2 at § 8707(d); *see B.B.*, *supra* note 10; *S.B.*, *supra* note 10.

¹⁵ *Id.* at § 8102(a).

¹⁶ *Id.* at § 8129(a).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,006.95 for the period August 6, 2016 through April 1, 2017, for which he was without fault.

OPM notified OWCP on November 28, 2016 that appellant had elected PRBLI with no reduction effective August 6, 2016. OWCP, however, did not deduct premiums for PRBLI from appellant's wage-loss compensation until later on April 1, 2017. It calculated the amount of the resulting overpayment as \$1,006.95. The record contains an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred. As noted, when an underwithholding 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

As OWCP failed to deduct PRBLI premiums from August 6, 2016 through April 1, 2017, appellant received an overpayment of compensation of \$1,006.95 during this period.¹⁸

On appeal before the Board, appellant's representative disputes the fact of the overpayment. He contends that the employing establishment assumed the full cost of basic life insurance. However, while in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he had selected.¹⁹ As noted, the record contains documentation reflecting his election of the optional PRBLI at no reduction.

Appellant further contends that contrary to OWCP's hearing representative's finding that no additional evidence concerning the overpayment issue was received, he had submitted a November 6, 2017 letter accompanied by pay stubs indicating that he paid \$9.14 for basic life insurance, Option A, standard optional life insurance, and Option C, family optional insurance premiums.

Appellant also has disputes the amount of the overpayment. However, he has failed to explain how the evidence of record establishes this assertion. The Board finds that OWCP properly calculated the amount of the overpayment and provided a clear and detailed explanation of the fact and amount of the overpayment.

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

¹⁷ *Supra* note 14.

¹⁸ *See J.C.*, Docket No. 17-1791 (issued February 23, 2018); *E.H.*, Docket No. 15-0848 (issued July 6, 2016); *V.B.*, Docket No. 15-0157 (issued March 16, 2015).

¹⁹ *Supra* note 12 at § 504(b); *see S.P.*, Docket No. 17-1888 (issued July 18, 2018).

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 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

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

²⁰ *Supra* note 2 at § 8129.

²¹ 20 C.F.R. § 10.438.

²² *Id.* at §§ 10.434-10.437

²³ *Id.* at § 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.*

²⁶ *Id.*

would defeat the purpose of FECA or be against equity and good conscience.²⁷ In an April 12, 2017 preliminary determination of overpayment, it advised appellant of its determination and instructed him to complete the enclosed overpayment recovery questionnaire and submit supporting financial documentation. 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 prerecoupment hearing. While appellant reported his monthly income and monthly expenses during the October 13, 2017 prerecoupment hearing, he did not submit supporting financial documentation. Thus, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience such that it would cause a financial burden.

Consequently, as appellant did not submit the financial information OWCP had requested from him as required under section 10.438 of its regulations,²⁸ which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in the amount of \$1,006.95.²⁹

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.³⁰ Section 10.441(a) of the regulations³¹ provides:

“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 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 any hardship.”³²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of overpayment by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days.

²⁷ *Supra* note 20.

²⁸ *Supra* note 21.

²⁹ *M.N.*, Docket No. 16-0360 (issued July 5, 2016).

³⁰ *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

³¹ *Supra* note 21 at § 10.441(a).

³² *Id.*

The record reflects that appellant continues to receive wage-loss compensation under FECA. When, as in this case, an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which provide in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.³³ The Board finds that OWCP did not abuse its discretion in following those guidelines in this case, where appellant has not submitted complete financial information, by deducting \$50.00 every four weeks.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,006.95 for the period August 6, 2016 through April 1, 2017, for which he was at fault. The Board also finds that OWCP did not abuse its discretion by refusing to waive recovery of the overpayment. The Board further finds that OWCP properly required recovery of overpayment by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2019
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

³³ *E.Z.*, Docket No. 17-0447 (issued June 19, 2017).