

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

D.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 19-0384
Issued: August 12, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2018 appellant filed a timely appeal from an August 22, 2018 merit decision and an October 26, 2018 nonmerit 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 this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$1,325.75 for the period September 2, 2017 through June 23, 2018; (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 26, 2018 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 additional evidence for the first time on appeal. *Id.*

properly denied waiver of recovery of the overpayment; and (3) whether OWCP's Branch of Hearings and Review properly denied appellant's September 19, 2018 request.

FACTUAL HISTORY

On July 14, 2016 appellant, a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a sprain of the left shoulder when her vehicle was struck by another vehicle while in the performance of duty. OWCP accepted the claim for contusion of left shoulder, contusion of left knee, sprain of ligaments of cervical spine, and strain of muscle, fascia, and tendon of lower back.

By letter dated March 3, 2017, OWCP notified appellant that she was placed on the periodic compensation rolls effective February 5, 2017. The letter indicated that deductions were being made for basic life insurance in the amount of \$18.60. OWCP advised appellant that, if she had optional life insurance or health insurance benefits coverage, she should contact OWCP as she was responsible for those premiums.

In an April 13, 2018 letter, the Office of Personnel Management (OPM) notified OWCP that appellant had elected postretirement basic life insurance (PRBLI) coverage -- 75 percent reduction, Option B 5 times salary -- full reduction, and Option C Family -- one time full reduction, effective September 2, 2017. It noted that her adjusted annual salary on which life insurance deductions was based increased to \$61,201.00. OPM provided a form that appellant completed on April 1, 2018, indicating that she wanted to continue Federal Employees' Group Life Insurance (FEGLI) in retirement with no reduction in basic life insurance, no reduction in Option A standard optional insurance, and no reduction in Option B or Option C family optional insurance.

In a July 10, 2018 correction letter, OPM notified OWCP that appellant had elected PRBLI coverage with no reduction, effective September 2, 2017.³ It noted that her adjusted annual salary on which life insurance deductions was based increased to \$61,201.00.

In a letter dated July 13, 2018, OWCP noted that the changes reflected in the July 10, 2018 letter were updated in the system.

By notice dated July 19, 2018, OWCP advised appellant of its preliminary determination that an overpayment of compensation occurred in the amount of \$1,325.75 for the period September 2, 2017 through June 23, 2018, because she had elected PRBLI with no reduction effective September 2, 2017, but OWCP did not begin deducting the elected PRBLI premiums from her compensation payments until June 24, 2018. Consequently, appellant was in arrears for the premiums from September 2, 2017 through June 23, 2018. OWCP found that she was without fault in the creation of the overpayment. It advised appellant of her right to request a telephone conference, a final decision based on the written evidence, or a precoupment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. OWCP further advised appellant to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It mailed the preliminary determination to appellant's

³ The previous options for Option B and Option C remained the same.

address of record and afforded her 30 days to provide the requested information. No response was received.

By decision dated August 22, 2018, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$1,325.75 for the period September 2, 2017 through June 23, 2018, because PRBLI premiums were not properly deducted from her compensation payments for that period. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery because she had not responded to the overpayment recovery questionnaire or provided supporting financial documentation. OWCP directed appellant to repay the \$1,325.75 overpayment in full.

On September 19, 2018 appellant contested the overpayment *via* an overpayment action request form. She contended that she did not receive the July 19, 2018 preliminary overpayment determination until August 23, 2018. Appellant's request form was addressed to OWCP's Branch of Hearings and Review.

By decision dated October 26, 2018, OWCP's hearing representative denied appellant's request, finding that she did not request a hearing on the preliminary overpayment determination, and that the final overpayment determination was not subject to 5 U.S.C. § 8124(b).

LEGAL PRECEDENT -- ISSUE 1

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 his or her 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

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁶ The coverage for basic life insurance is effective unless waived⁷ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁸

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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

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).⁹

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$1,325.75 for the period September 2, 2017 through June 23, 2018.

The record reflects that OPM notified OWCP of an underwithholding of PRBLI premiums for the period September 2, 2017 through June 23, 2018. By letter dated July 10, 2018, OPM notified OWCP that appellant had elected PRBLI coverage with no reduction, effective September 2, 2017. OWCP calculated the amount of the underwithholding and resulting overpayment to be \$1,325.75 as it had not deducted PRBLI premiums from her compensation benefits until June 24, 2018. As OWCP failed to deduct the elected PRBLI premiums for the period September 2, 2017 through June 23, 2018, appellant received an overpayment of compensation in the amount of \$1,325.75 during this period.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment must be recovered 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.”¹² 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.¹³

⁹ See *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

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

¹¹ See *E.H.*, Docket No. 15-0848 (issued July 6, 2016); *V.B.*, Docket No. 15-0157 (issued March 16, 2015).

¹² 5 U.S.C. § 8129(a)-(b); *R.C.*, Docket No. 19-0371 (issued June 12, 2019).

¹³ 20 C.F.R. § 10.438.

ANALYSIS -- ISSUE 2

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

The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering the overpayment.¹⁴ 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.¹⁵ Appellant, however, has the responsibility to provide the appropriate financial information to OWCP.¹⁶

In its preliminary overpayment determination dated September 13, 2018, OWCP advised appellant of her right to request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. It further advised her to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. OWCP afforded appellant 30 days to furnish the requested financial information. Appellant did not respond.

As appellant failed to submit a completed overpayment recovery questionnaire and supporting financial documentation, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷ In requesting waiver, the overpaid individual has the responsibility for submitting financial information.¹⁸ Appellant failed to furnish documentation, as required by section 10.438 of OWCP's implementing regulations; therefore, she was not entitled to waiver.¹⁹ The Board, consequently, finds that OWCP properly denied waiver of recovery of the overpayment of compensation.²⁰

LEGAL PRECEDENT -- ISSUE 3

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.²¹ Failure to request the prerecoupment hearing within 30 days shall

¹⁴ See *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

¹⁵ 20 C.F.R. § 10.436.

¹⁶ *Id.* at § 10.438; see also *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁷ *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

¹⁸ See *supra* note 13; see also *R.O.*, Docket No. 18-0076 (issued August 3, 2018).

¹⁹ *Id.*; see also *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

²⁰ See *E.S.*, Docket No. 18-1293 (issued January 28, 2019).

²¹ 20 C.F.R. § 10.432. See *E.M.*, Docket No. 17-1502 (issued February 22, 2019).

constitute a waiver of the right to a hearing.²² The only right to a review of a final overpayment decision is with the Board.²³ The hearing provisions of section 8124(b) of FECA²⁴ do not apply to final overpayment decisions.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP's Branch of Hearings and Review properly denied appellant's September 19, 2018 request.

OWCP's July 19, 2018 preliminary determination of overpayment provided appellant with a right to request a prerecoumpment hearing within 30 days. The record shows that OWCP properly mailed its July 19, 2018 preliminary determination to appellant's last known address.²⁶ However no response was received. By decision dated August 22, 2018, OWCP finalized its preliminary overpayment determination. On September 19, 2018 appellant contested the overpayment *via* an overpayment action request form addressed to OWCP's Branch of Hearings and Review.

The Board finds that as appellant's request form was mailed to the Branch of Hearings and Review, it was properly treated as a request for a hearing. OWCP's regulations, however, provide that when a final overpayment decision is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request. The only right to appeal is with the Board.²⁷ Appellant's September 19, 2018 request was made after the final overpayment determination. Therefore, the Board finds that OWCP properly denied it as she was not entitled to a hearing under 5 U.S.C. § 8124(b).²⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount \$1,325.75 for the period September 2, 2017 through June 23, 2018. The Board further finds that

²² *Id.*

²³ *Id.* at § 10.440(b).

²⁴ 5 U.S.C. § 8124(b).

²⁵ *Supra* note 23.

²⁶ It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual. This presumption known as the mailbox rule arises when it appears from the record that the notice was properly addressed and duly mailed. The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of OWCP itself, will raise the presumption that the original was received by the addressee. *See L.C.*, Docket No. 17-1939 (issued August 23, 2018); *George F. Gidicsin*, 36 ECAB 175 (1984).

²⁷ *Supra* note 24.

²⁸ OWCP's implementing regulations provide that the provisions of 5 U.S.C. § 8124(b) (concerning hearings) and 5 U.S.C. § 8128(a) (concerning reconsiderations) do not apply to final overpayment decisions. *Id.*

OWCP properly denied waiver of recovery of the overpayment. Additionally, OWCP's Branch of Hearings and Review properly denied appellant's September 19, 2018 request.

ORDER

IT IS HEREBY ORDERED THAT the October 26 and August 22, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 12, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board