

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

R.W., Appellant)	
)	
and)	Docket No. 19-0451
)	Issued: August 7, 2019
DEPARTMENT OF THE NAVY, MARINE)	
CORPS LOGISTICS BASE, Barstow, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 22, 2018 appellant filed a timely appeal from a November 23, 2018 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 this case.²

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,321.34 for the period March 13, 2007 through August 18, 2018 for which he was not at fault; (2) whether it abused its discretion by refusing to

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

waive recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$762.13 from appellant's continuing compensation benefits, every 28 days.

FACTUAL HISTORY

On June 1, 1992 appellant, then a 39-year-old electronics measurement equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 1992 he sustained a back injury due to lifting and moving loads with a pallet jack while in the performance of duty. OWCP accepted his claim for lumbar strain and herniated nucleus pulposus at L5-S1. Appellant stopped work for various periods to recover from several OWCP-approved surgeries, the first of which occurred in 1995. OWCP paid him wage-loss compensation on the periodic rolls commencing September 5, 2004 and continues to do so through the present. Appellant retired from the employing establishment effective March 13, 2017.

In a July 12, 2018 letter, the Office of Personnel Management (OPM) advised OWCP that appellant, as a compensationner, was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that he had elected postretirement basic life insurance (PRBLI), basic life insurance (BLI), and optional life insurance (OLI) coverage with no reduction, effective March 13, 2017. OPM noted that appellant's adjusted annual salary on which life insurance deductions were based was \$60,293.00.³

By notice dated October 15, 2018, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$24,321.34 because PRBLI, BLI, and OLI premiums had not been properly deducted from his compensation payments for the period March 13, 2007 through August 18, 2018. It provided a calculation of the overpayment, noting that he was not at fault in its creation.⁴ OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents within 30 days of the date of the letter. 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 precoupment hearing. Appellant did not submit an overpayment recovery questionnaire or otherwise submit a written response within the allotted period.

By decision dated November 23, 2018, OWCP finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$24,321.34 for the period March 13, 2007 through August 18, 2018, for which he was not at fault. It indicated that he had not submitted the requested financial information to justify waiving the recovery of the

³ OPM attached a Standard Form 2818, signed by appellant on June 6, 2008 in which he elected PRBLI, BLI, and OLI (Options A, B, and Option C) without reduction.

⁴ OWCP provided overpayment worksheets explaining the overpayment calculation. It noted that, for the period March 13, 2007 through August 18, 2018, zero PRBLI premiums were deducted from appellant's benefits, despite the fact that the total premiums for this period were \$18,571.21. For the period March 13, 2007 through August 18, 2018, \$2,466.33 in BLI premiums were deducted from his benefits, but the total premiums for this period were \$2,730.34. For the same period, \$28,759.47 in OLI premiums were deducted from appellant's benefits, but the total premiums for this period were \$34,245.59. The total of these deduction shortages is \$24,321.34.

overpayment. OWCP directed recovery of the overpayment by deducting \$762.13 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁵ The coverage for BLI is effective unless waived⁶ and premiums for BLI and OLI coverage are withheld from the employee's pay.⁷ Upon retirement or upon separation from the employing establishment or being placed on FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁸ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁹ however, the employee is responsible for payment of premiums for OLI 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 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).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

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

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 C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 C.F.R. § 870.504(a)(1).

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,321.34 for the period March 13, 2007 through August 18, 2018 for which he was not at fault.

OPM notified OWCP on July 12, 2018 that appellant had elected PRBLI, BLI, and OLI coverage with no reduction effective March 13, 2007. OWCP, however, did not deduct the proper amount of premiums for PRBLI, BLI, and OLI coverage from appellant's wage-loss compensation until August 19, 2018. It calculated the amount of the resulting overpayment as \$24,321.34. The record contains overpayment worksheets 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

The Board notes that OWCP properly calculated the amount of the overpayment and provided a clear and detailed explanation of the fact and amount of the overpayment. As OWCP failed to properly deduct PRBLI, BLI, and OLI premiums from March 13, 2007 through August 18, 2018, appellant received an overpayment of compensation of \$24,321.34 during this period.¹⁸

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

¹³ *Id.* at § 870.504(b).

¹⁴ 5 U.S.C. § 8707(d); *see also* *B.B.* and *S.B.*, *supra* note 10.

¹⁵ 5 U.S.C. § 8102(a).

¹⁶ *Id.* at § 8129(a).

¹⁷ *See 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).

good conscience.”¹⁹ 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 of recovery of the overpayment.²⁰

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.²¹

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.²² 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 \$50.00.²³

OWCP procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.²⁴ An individual’s liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. 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, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401k), jewelry, and artwork.²⁵

ANALYSIS -- ISSUE 2

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

As OWCP found appellant not at 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.²⁶ In an October 15,

¹⁹ *Supra* note 1 at § 8129.

²⁰ 20 C.F.R. § 10.438.

²¹ *Id.* at §§ 10.434-10.437.

²² *Id.* at § 10.436.

²³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

²⁴ *Id.* at Chapter 6.400.4a(2).

²⁵ *Id.* at Chapter 6.400.4b(3)(a), (b).

²⁶ *Supra* note 19.

2018 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 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 prerecoupment hearing. Appellant did not submit the requested financial documentation within the allotted period. 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,²⁷ which was necessary to determine his eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment in the amount of \$24,321.34.²⁸

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.²⁹ Section 10.441(a) of the regulations³⁰ 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.”³¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of overpayment by deducting \$762.13 from appellant's continuing compensation benefits, every 28 days.

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.³² The Board finds

²⁷ *Supra* note 20.

²⁸ *M.N.*, Docket No. 16-0360 (issued July 5, 2016).

²⁹ *C.A.*, *supra* note 11; *Albert Pineiro*, 51 ECAB 310 (2000) *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

³⁰ *Supra* note 20 at § 10.441(a).

³¹ *Id.*

³² *E.Z.*, Docket No. 17-0447 (issued June 19, 2017).

that OWCP did not abuse its discretion in following those guidelines in this case, where appellant had not submitted complete financial information, by deducting \$762.13 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,321.34 for the period March 13, 2007 through August 18, 2018 for which he was not 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 the overpayment by deducting \$762.13 from appellant's continuing compensation benefits every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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