

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

B.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer**

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**Docket No. 19-0126
Issued: December 9, 2019**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 22, 2018 appellant filed a timely appeal from a September 25, 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 appellant received an overpayment of compensation in the amount of \$18,266.03 for the period June 16, 2002 through August 18, 2018; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 25, 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.*

recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

On August 1, 1978 appellant, then a 30-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured both of her knees and the palm of her right hand when she tripped and fell over a plastic tie while in the performance of duty. OWCP accepted the claim for left knee synovitis, left knee meniscus tear, and bilateral knee internal derangement. Appellant stopped work on August 1, 1978, returned to limited-duty work on September 17, 1979, and gradually returned to regular-duty work. She was placed off work again on January 14, 2002. The record reflects OWCP's payment of wage-loss compensation on the periodic rolls commencing June 16, 2002.

In a June 28, 2007 letter, later corrected on July 7, 2008, the Office of Personal Management (OPM) notified OWCP that appellant's salary rate on which the Federal Employees' Group Life Insurance (FEGLI) was based was \$55,449.00 and that withholdings should commence January 12, 2002.

In a July 7, 2008 letter, OPM advised of a correction in life insurance coverage and indicated that appellant elected basic life insurance, option B -- 2 times her salary to be frozen (no-reduction) and post-retirement basic life insurance (PRBLI) option of 50 percent reduction. In a periodic disability worksheet dated February 5, 2009, OWCP adjusted appellant's compensation payments for optional life insurance (OLI) for code "KO" rather than the incorrect code of "Y1."

An ACPS daily rolls payment form (CA-25A) dated May 28, 2002 related appellant's effective weekly pay rate of \$1,000.79 based upon a recurrence pay rate. A supplemental rolls payment worksheet dated March 8, 2013 noted appellant's weekly pay rate as \$1,000.97. Multiple periodic disability payment reports through October 12, 2018 related appellant's effective weekly pay rate to be \$1,000.97 as of February 21, 2000.

In a manual adjustment form dated August 15, 2018, OWCP indicated that OLI and PRBLI deductions were calculated using the incorrect pay rate for the period June 16, 2002 through August 18, 2018 based on an unadjusted salary of \$37,000.00, when the correct unadjusted salary was \$56,000.00. It noted that appellant previously paid PRBLI of \$3,355.68 and OLI of \$20,444.40 for a total of \$23,800.08 at an unadjusted annual salary of \$37,000.00. However, appellant should have paid \$6,732.13 for PRBLI and \$35,333.98 for OLI for a total of \$42,066.11 based on an unadjusted annual salary of \$56,000.00. OWCP determined that she underpaid life insurance premiums by \$18,266.03. A copy of OWCP's calculations along with copies of appellant's compensation payments for the period June 16, 2002 to August 18, 2018 was provided.

In a preliminary overpayment determination dated August 20, 2018, OWCP advised appellant that she had received an overpayment of compensation in the amount of \$18,266.03 because the PRBLI and OLI premiums deducted from her compensation benefits for the period June 16, 2002 to August 18, 2018 were insufficient to cover the amount owed. It found that the difference between the actual deductions of \$23,800.08 and the correct deductions of \$42,066.11 resulted in an overpayment of \$18,266.03. OWCP made a preliminary determination that

appellant was not at fault in the creation of the overpayment. It noted that, although appellant wrote to OPM on January 15, 2013 and requested that her premiums for life insurance be verified, she could not have been expected to have known the precise amounts to be deducted. OWCP informed her that, if she believed the overpayment should be waived, she should complete an overpayment recovery questionnaire (Form OWCP-20) and submit detailed supporting financial documentation within 30 days. No additional information was received.

By decision dated September 25, 2018, OWCP determined that appellant received an overpayment of compensation in the amount of \$18,266.03 for the period June 16, 2002 through August 18, 2018. It found that she was not at fault in the creation of the overpayment, but that waiver of recovery was denied as appellant had not submitted a completed overpayment recovery questionnaire and supporting financial documentation. As appellant failed to submit current income and expense information, it determined that waiver of recovery of the overpayment could not be granted. OWCP directed that \$300.00 be withheld from her continuing compensation payments every 28 days in order to recover the overpayment.

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.³ The coverage for basic life insurance is effective unless waived,⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.⁵ 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.⁶ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.⁷ 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.⁸

³ 5 U.S.C. § 8702(a).

⁴ *Id.* at § 8702(b).

⁵ *Id.* at § 8707.

⁶ *Id.* at § 8706.

⁷ *Id.* at § 8707(b)(2).

⁸ *Id.* at § 8706(b)(3)(B). See *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *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 postretirement basic life insurance 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).

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.⁹

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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP found that an overpayment of compensation in the amount of \$18,266.03 was created during the period June 16, 2002 through August 18, 2018 due to its failure to deduct premiums for PRBLI and OLI based on the correct salary for FEGLI purposes. It indicated that appellant's life insurance premiums should have been premised on an unadjusted annual salary of \$56,000.00, but instead was based on an unadjusted annual salary of \$37,000.00. The record, however, lacks any financial information substantiating appellant's annual salary of \$56,000.00 during the time period of the overpayment. Multiple payment reports during the time period in question indicate that appellant's weekly pay rate based on a February 21, 2000 recurrence date, was \$1,000.97.

Due to the lack of financial information in the record pertaining to the amount of appellant's annual salary for the period June 16, 2002 through August 18, 2018, the Board is unable to adequately review the fact and amount of overpayment in this aspect of the case. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹² The Board finds that, as the overpayment decision in this case does not provide substantiation for appellant's purported \$56,000.00 annual salary during the overpayment time period, the fact and amount of the overpayment has not been established.

On remand OWCP shall determine appellant's annual salary during the period of the overpayment, and the resulting amount of overpayment of compensation during the period June 16, 2002 through August 18, 2018. It should then issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery

⁹ 5 U.S.C. § 8707(d); *see V.R.*, Docket No. 18-0626 (issued October 19, 2018); *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁰ *Id.* at § 8102(a).

¹¹ *Id.* at § 8129(a).

¹² *See N.M.*, Docket No. 19-0872 (issued September 12, 2019); *C.G.*, Docket No. 18-1655 (issued June 14, 2019); *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *see also O.R.*, 59 ECAB 432 (2008) (the Board determined that with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated).

questionnaire, and instructions for her to provide supporting financial information. After OWCP has further developed the case record, a *de novo* decision shall be issued.¹³

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: December 9, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹³ As this case is not in posture for decision regarding the amount of overpayment, the issue of waiver and recovery are moot. *See S.F.*, Docket No. 18-0003 (issued April 19, 2018); *see also R.L.*, Docket No. 11-1251 (issued January 27, 2012).