

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

_____)	
R.F., claiming as representative of the estate of)	
E.S.)	
)	
and)	Docket No. 18-0739
)	Issued: January 2, 2019
)	
DEPARTMENT OF DEFENSE,)	
Fort McClellan, AL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 22, 2018 appellant filed a timely appeal from a December 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUES

The issues are: (1) whether the employee received an overpayment of compensation in the amount of \$21,453.93; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ The employee died on August 5, 2017. Appellant is the employee's son and personal representative.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 29, 1996 the employee, then a 58-year-old stenographer, filed an occupational disease claim (Form CA-2) alleging that she sustained hypertension, anxiety, and panic attacks causally related to factors of her federal employment. She stopped work on July 2, 1996. OWCP accepted the claim for panic disorder with agoraphobia. It paid the employee wage-loss compensation for total disability beginning October 4, 1996.

An October 3, 1996 notification of personnel action (SF-50), indicated that the employee elected the standard option for life insurance and the additional option of five multiples.

The employee, on September 30, 1997, elected to receive wage-loss compensation from OWCP in lieu of benefits from the Office of Personnel Management (OPM).

By letter dated January 14, 1998, OWCP placed the employee on the periodic rolls effective December 1, 1997. It indicated that it was not deducting premiums for basic life insurance (BLI), postretirement basic life insurance (PRBLI), or optional life insurance (OLI). OWCP requested that the employee notify it immediately if she had benefits such as OLI that it was not deducting from her wage-loss compensation.

On January 20, 1998 the employee requested that OWCP deduct OLI and health benefit premiums from her wage-loss compensation.

OPM, on January 27, 1998, related in a Form RI 76-13 that the employee's final salary for Federal Employees' Group Life Insurance (FEGLI) purposes was \$26,577.00. It indicated that OWCP should withhold premiums for BLI beginning December 1, 1997 with the standard and additional options. OPM also advised that the employee had PRBLI with no reduction.³

On May 20, 2003 the employee signed an election form freezing all option B life insurance at its value as of age 65, to continue for life. The form notified her that she could cancel or reduce, but not increase, the number of elections at any time, but that no premiums would be refunded.

OWCP, on a July 1, 2003 computer printout, indicated that the employee had elected PRBLI with no reduction. In an attached worksheet, it noted that she had BLI with no reduction, and option B with five multiples. OWCP noted that the employee had turned 65 on July 1, 2003.

The employee died on August 5, 2017.

On October 25, 2017 OWCP noted that it had not properly deducted the employee's life insurance premiums. It advised that for the period December 1, 1997 to August 4, 2017, it deducted \$13,056.00 for BLI premiums and \$50,698.79 for miscellaneous deductions, when it should have deducted \$644.20 for BLI premiums, \$13,501.35 for PRBLI premiums, and

³ In a May 1, 2000 fiscal payment worksheet, OWCP calculated the amount that it should have deducted for BLI premiums from December 1997 to March 25, 2000 as \$280.44. On June 28, 2000 it administratively terminated efforts to collect the debt of \$280.44 as the costs to recover the debt exceeded the recovery amount.

\$71,063.17 for miscellaneous deductions, a difference of \$21,453.93.⁴ OWCP provided a payment history showing the deductions that it made from the employee's wage-loss compensation for the period in question.

OWCP, on October 26, 2017, informed appellant of its preliminary determination that the employee had received an overpayment of wage-loss compensation because it incorrectly deducted premiums for life insurance for the period December 1, 1997 to August 4, 2017. It advised that for the period December 1, 1997 through January 11, 2003, it should have deducted premiums of \$797.86 for OLI Option A, \$12,026.57 for OLI Option B, \$610.33 for BLI, and \$3,839.66 for PRBLI. From January 12, 2003 through December 31, 2011, OWCP should have deducted premiums of \$25,871.14 for OLI Option B, \$33.87 for BLI, and \$5,764.91 for PRBLI. For the period January 1, 2012 through July 31, 2014, it should have deducted premiums of \$13,274.74 for OLI Option B and \$1,750.86 for PRBLI. From August 1 through 23, 2014, OWCP should have deducted premiums of \$399.21 for OLI Option B and \$42.66 for PRBLI, from August 24, 2014 through December 31, 2015, it should have deducted premiums \$8,591.79 for OLI Option B and \$918.09 for PRBLI, and from January 1, 2016 through August 4, 2017, it should have deducted premiums of \$10,101.86 for OLI Option B and \$1,185.17 for PRBLI. It added the amount it should have deducted to find a total of \$85,208.72. OWCP advised that instead of this amount, it had deducted \$13,056.00 for BLI premiums and \$50,698.79 for other life insurance premiums, for a total of \$63,752.79, which created an overpayment of \$21,453.93. It indicated that during the period that it paid the employee, it had estimated the offset for her life insurance premiums due to computer software limitations, and that the offset totaled \$63,752.79 instead of the appropriate deduction for premiums of \$85,208.72.

OWCP further notified appellant of its preliminary determination that the employee was not at fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. 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 precoupment hearing.

On November 30, 2017 appellant telephoned OWCP requesting information regarding the preliminary overpayment determination, noting that the estate may not have enough money to repay the overpayment. OWCP's claims examiner advised that he would conduct research and "contact him in a few days." He left appellant a telephone message on December 19, 2017 indicating that it would in fact need to collect the overpayment.

By decision dated December 19, 2017, OWCP denied waiver of recovery of the overpayment in the amount of \$21,453.93 that occurred because it had incorrectly deducted the employee's life insurance premiums from December 1, 1997 through August 4, 2017. It noted that appellant had not responded to the preliminary overpayment determination other than to telephone about possibly reducing the amount of the overpayment. OWCP determined that he should forward the entire amount of the overpayment as repayment.

On appeal, appellant advises that he did not know how to complete the overpayment recovery questionnaire and did not have all of the employee's information. He contacted OWCP

⁴ OWCP is referring to OLI in referencing miscellaneous deductions.

for assistance and a claims examiner explained that he would investigate the situation. Appellant subsequently received the December 19, 2017 overpayment determination. He notes that OWCP made the mistake and asserts that it was not realistic to expect him to have all the information on the employee's financial situation within 30 days.

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 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 OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his 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 or her 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. 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 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 remained in effect.¹² An employee who

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 D.T.*, Docket No. 17-0901 (issued January 29, 2018).

¹¹ *See S.P.*, Docket No. 17-1888 (issued July 18, 2018).

¹² 5 C.F.R. § 870.504(a)(1).

does not file a life insurance election form 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not established that the employee received an overpayment of compensation as it failed to properly deduct life insurance premiums from December 1, 1997 to August 4, 2017. The employee received wage-loss compensation from OWCP on the periodic rolls effective December 1, 1997. OPM advised OWCP on January 27, 1998 of the employee's final salary for FEGLI purposes and noted that she had elected BLI with multiples and PRBLI with no reduction. The employee requested on January 20, 1998 that OWCP deduct OLI premiums from her wage-loss compensation.

OWCP procedures provide that BLI premiums are deducted from compensation until the age of 65.¹⁷ A claimant must be enrolled in BLI to be eligible for OLI and premiums for OLI are withheld until the age of 65, unless he or she opts to freeze Option B and C.¹⁸ Before the age of 65, a claimant must pay premiums for both BLI and, if elected, PRBLI.¹⁹ The employee turned 65 on July 1, 2003. She signed an election form freezing her Option B OLI at its value to continue for the duration of her life.

OWCP deducted \$13,056.00 for BLI premiums and \$50,698.79 in miscellaneous deductions from December 1, 1997 to August 4, 2017. It subsequently calculated that it should have deducted \$644.20 for BLI premiums, \$13,501.35 in PRBLI premiums, and an additional \$71,063.17 for miscellaneous deductions, which it found created an overpayment of \$21,453.93.

¹³ *Id.* at § 870.504(b).

¹⁴ 5 U.S.C. § 8707(d); *see also S.P., supra* note 11; *Keith H. Mapes*, 56 ECAB 130 (2004).

¹⁵ *Id.* at § 8102(a).

¹⁶ 20 C.F.R. §§ 10.434-10.437.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.0901.15(c)(1) (February 2013).

¹⁸ *Id.* at Chapter 2.0901.15(c)(4); *see also V.R.*, Docket No. 18-0626 (issued October 19, 2018).

¹⁹ *Id.* at Chapter 2.0901.15(c)(3).

For the period December 1, 1997 to August 4, 2017, OWCP deducted \$13,056.00 for deducted BLI premiums when it should have deducted only \$644.20. The employee, consequently, did not receive an overpayment due to OWCP's failure to adequately deduct premiums for BLI.

The Board further finds that OWCP failed to adequately support its determination that the employee received an overpayment from December 1, 1997 through August 4, 2017 because it failed to deduct premiums for PRBLI. The record does not contain evidence that she signed a document electing PRBLI with no reduction. OPM informed OWCP on January 27, 1998 that the employee had elected PRBLI with no reduction, but provided no supporting documentation establishing such enrollment. The record does not contain a signed election form showing which coverage she actually selected. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after retirement.²⁰ As OWCP has not factually established that the employee elected PRBLI with no reduction, it has not met its burden of proof to establish that she received an overpayment of compensation based on its failure to deduct premiums for PRBLI from December 1, 1997 through August 4, 2017.²¹

As noted, the record supports that the employee elected OLI and froze her election of OLI when she reached age 65. A computer payment inquiry report indicates that OWCP deducted OLI premiums from October 4, 1996 to December 6, 1997 and March 23 to May 17, 2003. From December 7, 1997 to March 22, 2003, May 18 to June 14, 2003, and October 4, 2003 to August 6, 2005, it did not deduct premiums for OLI. From June 15 to October 4, 2003 and August 7, 2005 to August 4, 2017, OWCP did not deduct premiums for OLI, but made deductions from the employee's wage-loss compensation that it labeled as "miscellaneous." It asserted that it had deducted \$50,698.79 during the period of the overpayment under miscellaneous deductions as an estimate of life insurance premiums. OWCP deducted the \$50,698.79 from the amount that it found it should have withheld from the employee's compensation for OLI and PRBLI during the period of the overpayment. The Board, however, is unable to ascertain the amount of any overpayment that arose from OWCP's failure to properly deduct OLI premiums as it is not specifically supported by computer records identifying OLI deductions. OWCP did not provide adequate documentation demonstrating whether or to what extent the miscellaneous deductions were for OLI premiums. It, consequently, failed to support its finding that the employee received an overpayment due to its failure to adequately deduct premiums for OLI.²²

As fact and amount of overpayment are not clearly established by the record, the case will be remanded to OWCP. On remand, OWCP should obtain an executed election form from OPM completed by the employee prior to determining whether she received an overpayment of compensation due to its failure to deduct premiums for PRBLI.²³ It should further provide supporting evidence identifying the miscellaneous deductions made from the employee's wage-

²⁰ See *D.T.*, *supra* note 10.

²¹ See *R.U.*, Docket No. 16-0027 (issued March 24, 2016).

²² See generally *V.R.*, *supra* note 18; *R.U.*, *id.*

²³ See *G.T.*, Docket No. 16-0042 (issued July 15, 2016).

loss compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.²⁴

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether the employee received an overpayment of compensation.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 2, 2019
Washington, DC

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

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

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

²⁴ In view of the Board's disposition of the overpayment, the issue of whether OWCP properly denied waiver of recovery of the overpayment is moot.