

waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$264.00 every 28 days from appellant's continuing compensation benefits.

FACTUAL HISTORY

On February 7, 2012 appellant, then a 30-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on February 1, 2012, she lifted a tray of mail while in the performance of duty and felt a pop in her neck followed by pain in her neck and fingers of her right hand. She stopped work on February 3, 2012. On June 19, 2012 appellant underwent an anterior cervical discectomy and interbody fusion. On September 25, 2012 OWCP accepted appellant's traumatic injury claim for temporary aggravation of degeneration of cervical intervertebral disc.³ On May 1, 2013 it expanded acceptance to include additional conditions of degeneration of cervical intervertebral disc, brachial neuritis or radiculitis, and other unspecified disc disorders of the cervical region.

On August 17, 2015 OWCP commenced payment of wage-loss compensation benefits on the periodic rolls. The employing establishment provided appellant's health benefits enrollment code of 112 and her FEGLI enrollment code of Z5 effective June 12, 2015.

In a letter dated November 1, 2016, the Office of Personnel Management (OPM) informed OWCP that as a compensation recipient appellant was eligible to continue to receive FEGLI coverage for Code Z5. It further notified OWCP that appellant had elected post-retirement basic life insurance (PRBLI) with no reduction with a commencing date of June 11, 2016. OPM provided a form that appellant had completed on September 21, 2016 indicating that she wanted to continue FEGLI in retirement with no reduction in basic life insurance, Option A standard optional insurance, and no reduction in Option B, or Option C family optional insurance.

On February 26, 2017 appellant elected to continue to receive wage-loss compensation from OWCP. Beginning April 30, 2017, OWCP withheld appellant's PRBLI premium from her continuing wage-loss compensation benefit payments.

Upon review of the fiscal record, OWCP determined that as appellant elected zero percent reduction in PRBLI, her underwithholding was \$131.73 every 28 days or \$4.70 per day. It multiplied the 15-day period of June 11 through 25, 2016 by \$4.70 per day to calculate the underwithholding of \$70.50 for this initial period. For the each of the 11 successive pay periods of 28 days, from June 26, 2016 through April 29, 2017, the underwithholding was \$131.73 multiplied by 11 resulting in \$1,449.03. OWCP added the amounts of \$70.50 and \$1,449.03 to reach \$1,519.53 in underwithholding of PRBLI premiums.

³ Appellant returned to work full-time light-duty work on January 4, 2013 and stopped work on April 4, 2013. On May 3, 2013 OWCP commenced payment of wage-loss compensation benefits on the periodic rolls. Appellant underwent a second cervical spine surgery on August 27, 2013. She returned to light-duty work on January 16, 2014, but stopped on June 12, 2015.

In a letter dated August 2, 2017, appellant notified OWCP in writing that her address had changed from Kentwood, Louisiana to Zachary, Louisiana. On September 30, 2017 she notified OWCP that she had been married and subsequently changed her name.

On February 8, 2018 OWCP notified appellant of its preliminary determination that an overpayment of compensation in the amount of \$1,593.53 had been created for the period June 11, 2016 through April 29, 2017. It determined that the overpayment occurred because she elected a change with her PRBLI to zero percent reduction effective June 11, 2016. OWCP found that appellant was at fault in the creation of this overpayment as she had accepted a payment which she knew or should have known was incorrect as she knew or should have known that making the election change could possibly result in an overpayment. It provided calculations of her overpayment, totaling \$1,519.53. OWCP directed appellant to complete an overpayment recovery questionnaire (Form OWCP-20), and advised her of her appeal rights.

By decision dated April 26, 2018, OWCP found that appellant had received an overpayment of compensation in the amount of \$1,593.53 for the period June 11, 2016 through April 29, 2017. It further found that she was at fault in the creation of the overpayment of compensation as she received a payment which she knew or reasonably should have known was incorrect. OWCP noted that appellant had not responded to the request for financial information in the February 8, 2018 preliminary decision. It determined that the amount of \$264.00 should be deducted from her continuing compensation benefits, every 28 days, to recover the overpayment of compensation.⁴

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of 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.⁵ 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.⁶

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.⁷ The coverage for basic life insurance is effective unless waived,⁸ and premiums for basic and optional life coverage are withheld from the employee's pay.⁹ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose

⁴ OWCP's debt amortization schedule utilized the correct amount of the prior calculations or \$1,519.53 rather than \$1,593.53 as the total amount of the overpayment.

⁵ 5 U.S.C. § 8129.

⁶ 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

⁷ 5 U.S.C. § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

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.¹⁰ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.¹¹ 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.¹²

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).¹³

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.¹⁴ An 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.¹⁵ 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.¹⁶

¹⁰ *Id.* at § 8706.

¹¹ *Id.* at § 8707(b)(2).

¹² *Id.* at § 8706(b)(3)(B). See *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 PRBLI 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 the period July 1983 through November 1989).

¹³ See *S.P.*, *id.*; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁴ 5 C.F.R. § 870.504(a)(1).

¹⁵ *Id.* at § 870.504(b).

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

ANALYSIS -- ISSUE 1

The Board finds that an overpayment of compensation was created in the amount of \$1,519.53 for the period June 11, 2016 through April 29, 2017.¹⁷

The Board finds that OWCP presented detailed findings of fact and a statement of reasons to support its determination that appellant received an overpayment of compensation in the amount of \$1,519.53 for the period June 11, 2016 through April 29, 2017. The record contains the signed form dated September 21, 2016 which indicated her election of PRBLI with no reduction.¹⁸ OWCP failed to properly deduct premiums for PRBLI, thereby creating the \$1,519.53 overpayment. It explained to appellant how the overpayment occurred in its preliminary determination of overpayment.¹⁹

The Board finds that OWCP provided a clear and detailed explanation of the fact and amount of the overpayment. The mathematical calculations within these documents were reproducible and showed that the amount of the overpayment was in fact \$1,519.53 for the period June 11, 2016 through April 29, 2017. The Board thus finds that OWCP properly determined the fact and amount of appellant's overpayment.²⁰

On appeal appellant contends that she did not receive OWCP's February 8, 2018 preliminary determination of overpayment. The Board notes that there is no evidence that the February 8, 2018 preliminary determination was returned to OWCP as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.²¹ This presumption is commonly referred to as the "mailbox rule." It arises when the record reflects that the notice was properly addressed and duly mailed.²² The current record is devoid of evidence to rebut the presumption that appellant received OWCP's July 22, 2016 preliminary determination in due course.

¹⁷ The Board finds that OWCP incorrectly listed the amount of the overpayment in this case as \$1,593.53 in its preliminary and final overpayment determinations. OWCP's calculations that were attached to the preliminary notice of overpayment show a total overpayment of \$1,519.53. The Board finds that \$1,519.53 is the correct amount of overpayment. As the amount of the overpayment found by the Board is less than the amount noted in the preliminary and final overpayment determinations, the Board finds this to be harmless error. *See B.S.*, Docket No. 16-0712 (issued November 7, 2016).

¹⁸ *Compare D.T.*, Docket No. 17-0901 (issued January 29, 2018) (finding that OWCP had not established an overpayment without a signed form supporting the claimant's selection of PRBLI).

¹⁹ *L.K.*, Docket No. 17-1393 (issued March 20, 2018).

²⁰ *E.H.*, Docket No. 15-0848 (issued July 6, 2016).

²¹ *C.S.*, Docket No. 17-0167 (issued April 11, 2018).

²² *Id.*

LEGAL PRECEDENT -- ISSUE 2

A waiver of recovery of an overpayment is not possible if the claimant is at fault in the creation of the overpayment.²³ A claimant who has done any of the following will be found to be at fault with respect to creating an overpayment: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known to be incorrect. Whether or not an individual was at fault depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.²⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly found that appellant was at fault in the creation of the overpayment of compensation in the amount of \$1,519.53 for the period June 11, 2016 through April 29, 2017.

According to OWCP's procedures, a claimant should always be found without fault if the overpayment results from the underwithholding of health or life insurance premiums, unless the claimant had actual knowledge of the calculation error.²⁵ Under the circumstances of this case, the Board finds that there is no evidence to establish that appellant actually knew of the underwithholding of insurance premiums which resulted in the overpayment of compensation for the period June 11, 2016 through April 29, 2017.²⁶ Consequently, the case will be remanded so that OWCP can consider whether she is entitled to waiver of recovery of the overpayment.²⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$1,519.53 for the period June 11, 2016 through April 29, 2017. The Board also finds that appellant was without fault in the creation of the \$1,519.53 overpayment of compensation.

²³ *P.H.*, Docket No. 13-0642 (issued August 12, 2013).

²⁴ *Id.*

²⁵ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.5(b)(1)(c) (June 2009).

²⁶ *Compare C.R.*, Docket No. 16-1241 (issued June 15, 2017) (the Board found that OWCP had established actual knowledge by communications from appellant relative to the calculation error).

²⁷ *See P.H.*, *supra* note 23; *J.L.*, Docket No. 13-0132 (issued June 6, 2013). In light of the Board's disposition in Issue 2, Issue 3 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further action consistent with this decision.

Issued: January 16, 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