

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$5,423.55 for the period March 24, 2012 to March 31, 2018 due to incorrect deduction of life insurance premiums; (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 22, 2009 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on May 7, 2008 she first realized that cervical, lumbar, and thoracic conditions had been caused by casing mail while in the performance of duty. She did not initially stop work. By decision dated September 9, 2010, OWCP accepted the claim for cervical, lumbar, and thoracic sprains. It subsequently expanded acceptance of appellant's claim to include depression.

In a letter dated May 17, 2011, OWCP placed appellant on the periodic rolls for temporary total disability with the first payment covering the period April 9 to May 7, 2011. It indicated that it was deducting \$17.40 for basic life insurance (BLI) and \$39.66 for optional life insurance (OLI). OWCP requested that appellant notify it immediately if she had benefits such as OLI that it was not deducting from her wage-loss compensation.

By decision dated June 28, 2013, OWCP reduced appellant's wage-loss compensation based on her capacity to earn wages as surveillance system monitor, effective June 30, 2013. It utilized the *Shadrick* formula⁴ and found that appellant had 40 percent loss of wage-earning capacity (LWEC). OWCP indicated it was deducting premiums of \$17.40 for BLI and \$34.20 for OLI and was not deducting premiums for postretirement basic life insurance (PRBLI).

In a July 1, 2013 letter, the Office of Personnel Management (OPM) informed OWCP that as a compensationner appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic and optional life insurance coverage. It requested OWCP to deduct for Code 90 as appellant had elected BLI option Bx3 and full reduction, effective March 24, 2012. OPM further advised that appellant had elected PRBLI coverage with 75 percent reduction. It noted that her adjusted annual salary on which life insurance deductions was based increased to \$56,508.00.

Following appellant's request for an oral hearing, by decision dated January 24, 2014, OWCP's hearing representative reversed the June 28, 2013 LWEC determination.

In a February 11, 2014 letter, OWCP informed appellant that her compensation for temporary total disability was being reinstated retroactive June 30, 2013. It further advised that it was deducting premiums of \$17.70 for BLI and \$34.66 for OLI.

By notice dated April 10, 2018, OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation because OLI premiums had not been correctly deducted from her compensation payments for the period March 24, 2012 to

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953).

March 31, 2018. It advised that for the period March 24, 2012 to March 31, 2018, it should have deducted premiums of \$1,390.71 for BLI and \$9,718.06 for OLI code 90. OWCP advised that instead of this amount, it had deducted \$1,390.71 for BLI premiums and \$4,294.51 for OLI (J1), which created an overpayment of \$5,423.55. It requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified her that within 30 days of the date of the letter she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On April 30, 2018 OWCP received an overpayment action request form, dated April 26, 2018, on which appellant had checked a box requesting a prerecoupment hearing. Appellant also indicated that she disagreed with the fact and amount of the overpayment, believed the overpayment occurred through no fault of her own, and requested waiver of recovery of the overpayment.

On September 26, 2018 OWCP received an overpayment recovery questionnaire and financial evidence including a monthly income, list of expenses, and funds on hand. It also received a notification of personnel action, Standard Form (SF-50), dated August 25, 2012, and a continuation of life insurance form dated August 17, 2017. The Form SF-50 noted that appellant had been terminated from the employing establishment effective March 24, 2012 and that appellant had been provided a certification of insurance status. This form also noted that life insurance coverage would be extended for 31 days, as appellant was entitled to convert to an individual plan. On the August 17, 2017 life insurance form, appellant checked “yes” to BLI, option A -- standard option, and option B -- additional optional insurance. She requested a summary of her insurance and inserted a question mark on the line for number of reduction multiples and number of full reduction multiples.

Following the hearing, OWCP received a completed overpayment recovery questionnaire dated October 3, 2018. Appellant noted monthly income of \$3,022.00⁵ and \$19,300.28 in funds, which included \$100.00 of cash on hand, \$1,014.00 in a checking account, and \$18,186.28 in a savings account. Monthly expenses totaling \$3,800.00 including \$1,703.50 in rent or mortgage, \$744.00 for food, \$110.00 for clothing, \$493.00 for utilities, \$727.00 for other expenses, \$100.00 monthly payment to Bank of America,⁶ \$200.00 for Capital One,⁷ and \$200.00 for Citibank.⁸

By decision dated October 26, 2018, an OWCP hearing representative finalized, as modified, the preliminary determination that appellant received an overpayment of compensation in the amount of \$5,423.55 for the period March 24, 2012 through March 30, 2018.⁹ She found that appellant was without fault in the creation of the overpayment of compensation and cited to

⁵ OWCP records show that appellant receives a net amount of \$3,022.64 every 28 days on the periodic rolls.

⁶ Appellant listed an outstanding balance of \$1,213.00.

⁷ An outstanding balance of \$371.18 was noted on the form.

⁸ Appellant listed an outstanding balance of \$1,579.58.

⁹ OWCP’s hearing representative mistakenly noted the date as March 23, 2012. The preliminary notice determination of overpayment correctly noted March 24, 2012 as the beginning date.

OWCP's procedures regarding finding underdeduction of life or health insurance premiums.¹⁰ Next, she found that the financial information appellant provided showed that requiring repayment would not create a hardship for appellant. The hearing representative directed recovery of the overpayment by deducting \$300.00 every 28 days from appellant's continuing compensation payments.

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.¹¹ 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.¹²

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.¹³ The coverage for basic life insurance is effective unless waived,¹⁴ and premiums for basic and optional life coverage are withheld from the employee's pay.¹⁵ 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.¹⁶ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.¹⁷ 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.¹⁸

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

¹⁰ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4(g)(8) (September 2018).

¹¹ 5 U.S.C. § 8129.

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

¹³ 5 U.S.C. § 8702(a).

¹⁴ *Id.* at § 8702(b).

¹⁵ *Id.* at § 8707.

¹⁶ *Id.* at § 8706.

¹⁷ *Id.* at § 8707(b)(2).

¹⁸ *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 the 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).

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).¹⁹

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.²⁰ 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.²¹ 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.²²

ANALYSIS -- ISSUE 1

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

Appellant received wage-loss compensation from OWCP on the periodic rolls effective April 9, 2011. OPM advised OWCP on July 1, 2013 of appellant's salary for FEGLI purposes and noted that she had elected BLI with multiples and full reduction and PRBLI with 75 percent reduction.

OWCP's procedures provide that BLI premiums are deducted from compensation until the age of 65.²³ 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.²⁴ Before the age of 65, a claimant must pay premiums for both BLI and, if elected, PRBLI when separated or retired from federal employment.²⁵ The employing establishment terminated appellant's employment effective March 24, 2012.

The Board finds that OWCP failed to adequately support its determination that appellant received an overpayment of compensation for the period March 24, 2012 to March 31, 2018 because it failed to deduct the correct premiums for BLI and OLI code 90. The record does not

¹⁹ See *S.P., id.*; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

²⁰ 5 C.F.R. § 870.504(a)(1).

²¹ *Id.* at § 870.504(b).

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

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15(c)(1) (February 2013).

²⁴ *Id.* at Chapter 2.0901.15(c)(4); see also *V.R.*, Docket No. 18-0626 (issued October 19, 2018).

²⁵ *Id.* at Chapter 2.0901.15(c)(3).

contain evidence that she signed a document electing PRBLI coverage with 75 percent reduction and optional BLI option B x3 and full reduction. OPM informed OWCP on July 1, 2013 that the employee had elected PRBLI with 75 reduction and BLI with options and full reduction, but provided no supporting documentation establishing such enrollment. The record does not contain a signed election form showing which coverage she actually selected or if she actually selected coverage. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement.²⁶ As OWCP has not factually established appellant's life insurance election, effective March 24, 2012, it has not met its burden of proof to establish that she received an overpayment of compensation from March 24, 2012 to March 31, 2018.

As the 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 appellant prior to determining whether she received an overpayment of compensation due to its failure to deduct life insurance premiums. After such further development as OWCP deems necessary, it should issue a *de novo* decision.²⁷

CONCLUSION

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

²⁶ *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018); *Glen B. Cox*, 42 ECAB 703 (1991)

²⁷ In view of the Board's disposition of the overpayment, the issue of whether OWCP properly denied waiver of recovery of the overpayment and the recovery amount are moot.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2018 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 1, 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