



required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On May 12, 1997 appellant, then a 55-year-old operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that she sustained "back and neck sprains and internal injuries to the lower stomach and pelvic area" after she was struck by a cart while in the performance of duty. OWCP accepted the claim for cervical sprain and abdominal contusion. It initially paid appellant wage-loss compensation on the supplemental rolls, and then paid wage-loss compensation on the periodic rolls commencing May 3, 1999.

In a letter dated May 6, 2002, OWCP informed appellant that her gross compensation was \$3,280.00, that her health benefits deduction was \$189.66, that her optional life insurance deduction was \$8.30, that her basic life insurance deduction was \$9.41, and that her net compensation every 28 days was \$3,063.22.

In an undated Office of Personnel Management (OPM) form regarding election of health benefits and life insurance, received by OWCP on November 6, 2003, appellant marked boxes electing to have basic life insurance and optional life insurance premiums withheld beginning September 4, 1999 and continuing. Appellant also elected the "no reduction" option for post-retirement basic life insurance (PRBLI).

In a letter dated August 13, 2004, OWCP informed appellant that her gross compensation was \$3,280.00, that her health benefits deductions was \$225.76, that her life insurance deduction was \$17.20, that "other" deductions totaled \$9.41, and that her net compensation was \$3,148.22 paid every 28 days.<sup>3</sup>

In a letter dated March 16, 2017, appellant requested information regarding the dates and amounts of any and all life insurance premiums withheld since March 3, 1997. On April 6, 2017 OWCP sent her the requested information.

By preliminary determination dated March 23, 2018, OWCP advised appellant that an overpayment of compensation in the amount of \$22,560.44 had been created because she had elected PRBLI with no reduction effective September 3, 1999, but it did not begin deducting PRBLI premiums from her compensation payments until November 11, 2017. Consequently, appellant was in arrears for the premiums from September 3, 1999 through November 11, 2017. OWCP found that she was without fault in the creation of the overpayment. It advised appellant of her right to request a telephone conference, a final decision based on the written evidence, or a

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<sup>3</sup> In a letter dated April 28, 2016, OWCP informed appellant that an overpayment in the amount of \$15.32 for the period January 10 to March 5, 2016 was identified in her case. It indicated that the overpayment occurred because Federal Employees Group Life Insurance (FEGLI) premiums were not deducted from appellant's compensation payments. OWCP related that debt collection actions on overpayments of less than \$200.00 may be administratively terminated at any time after overpayment had been identified. It found that the collection action on the overpayment was administratively terminated because the overpayment was less than \$200.00, and did not result from either a refund due to OWCP as a result of a third-party settlement, or an election of OPM benefits where the debt can be recovered from the retroactive part of annuities held by OPM.

prerecoupment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. OWCP further advised that appellant was to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents.

On April 24, 2018 appellant requested a telephone conference and contested the overpayment because she believed the overpayment occurred through no fault of her own, and requested a waiver. She submitted a completed Form OWCP-20 and relevant supporting financial documents along with her request. Appellant indicated that she had a total monthly income of \$7,101.84 and total monthly expenses of \$6,248.51. Monthly income consisted of \$1,557.57 in FECA benefits, \$1,506.00 in SSA benefits, \$3,638.27 in Veterans benefits, and \$400.00 in other income. Monthly expenses consisted of \$800.00 for food, \$400.00 for clothing, \$1,301.51 for rent or mortgage, \$3,600.00 for American Express debt, and \$147.00 for Bank of America debt. In addition, appellant's total net assets equaled \$28,632.18. Her assets consisted of \$150.00 cash on hand, \$28,282.18 savings, and \$200.00 checking.

By decision dated May 23, 2018, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$22,560.44 because PRBLI premiums were not properly deducted from her compensation payments for the period September 3, 1999 through November 11, 2017. It found that she was without fault in the creation of the overpayment, but that she was not entitled to waiver of recovery because she had not provided information to support that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscious. OWCP directed recovery by deducting \$500.00 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.<sup>4</sup> When an overpayment of compensation 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.<sup>5</sup>

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.<sup>6</sup> The coverage for basic life insurance is effective unless waived,<sup>7</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>8</sup> 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

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<sup>4</sup> 5 U.S.C. § 8129.

<sup>5</sup> 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

<sup>6</sup> 5 U.S.C. § 8702(a).

<sup>7</sup> *Id.* at § 8702(b).

<sup>8</sup> *Id.* at § 8707.

made will be used to withhold premiums from his or her annuity or compensation payments.<sup>9</sup> Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.<sup>10</sup> 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.<sup>11</sup>

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).<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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<sup>9</sup> *Id.* at § 8706.

<sup>10</sup> *Id.* at § 8706(b)(2).

<sup>11</sup> *Id.* at § 8706(b)(3)(B). *See V.H.*, Docket No. 18-1124 (issued January 16, 2019); *see also 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).

<sup>12</sup> *See V.H.*, *id.*; *see also S.P.*, *id.*; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>13</sup> 5 C.F.R. § 870.504(a)(1).

<sup>14</sup> *Id.* at § 870.504(b).

<sup>15</sup> 5 U.S.C. § 8707(d); *see V.H.*, *supra* note 11; *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 \$22,560.44 for the period September 3, 1999 through November 11, 2018.

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 \$22,560.44 for the period September 3, 1999 through November 11, 2018. The record contains a signed form dated November 6, 2003 which indicates appellant's election of PRBLI with no reduction.<sup>16</sup> OWCP, however, failed to properly deduct premiums for PRBLI, thereby creating an overpayment of compensation in the amount of \$22,560.44. It explained to appellant how the overpayment occurred in its preliminary determination of overpayment dated March 23, 2018.<sup>17</sup>

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 the amount of the overpayment was in fact \$22,560.44 for the period September 3, 1999 through November 11, 2018. The Board thus finds that OWCP properly determined the fact and amount of appellant's overpayment.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA<sup>19</sup> provides that an overpayment must be recovered 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 good conscience." Thus, a finding that appellant was without fault does not automatically result in waiver of recovery of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>20</sup>

According to 20 C.F.R. § 10.436, 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 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

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<sup>16</sup> *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).

<sup>17</sup> *L.K.*, Docket No. 17-1393 (issued March 20, 2018).

<sup>18</sup> *V.H.*, *supra* note 10; *E.H.*, Docket No. 15-0848 (issued July 6, 2016).

<sup>19</sup> 5 U.S.C. § 8129(1)-(b); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>20</sup> *A.C.*, *id.*; *see V.T.*, Docket No. 18-0628 (issued October 25, 2018).

OWCP from data provided by the Bureau of Labor Statistics.<sup>21</sup> An individual's liquid assets include, but are not limited to case, the value of stocks, bonds, savings accounts, mutual funds and certificates of deposits.<sup>22</sup> 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, and furnishings and supplies.<sup>23</sup>

Section 10.437 provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>24</sup> To establish that, a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained and that the action was based chiefly or solely in reliance on the payments or on the notice of payment.<sup>25</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$22,560.44 overpayment.

OWCP found that appellant was without fault in the creation of the overpayment of compensation and considered whether she was entitled to waiver of recovery. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>26</sup> In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP procedures.<sup>27</sup>

The Board finds that OWCP properly determined that appellant did not require substantially all of her income to meet ordinary living expenses. Appellant indicated that she had monthly expenses of \$6,248.51 and monthly income of \$7,101.84. As her monthly income exceeded her ordinary and necessary living expenses by more than \$50.00, she did not need

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<sup>21</sup> 20 C.F.R. § 10.436. OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (June 2009).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 20 C.F.R. § 10.437.

<sup>25</sup> *Id.* at § 10.437(b)(1).

<sup>26</sup> *See A.C.*, *supra* note 19; *see also E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>27</sup> *Supra* note 21.

substantially all of her income for ordinary and necessary living expenses.<sup>28</sup> Appellant also listed net assets in the amount of \$28,632.18, which exceed the resource base of \$4,800.00.

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant has submitted no evidence that she had relied upon the incorrect payments to her detriment or that she would experience severe financial hardship attempting to repay the debt.<sup>29</sup> Consequently, OWCP properly denied waiver of recovery of the overpayment.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides that when an overpayment of compensation 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 the 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 hardship.<sup>30</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation.

The Board finds that OWCP gave due regard to the financial information appellant submitted as well as the factors set forth in section 10.441. As her monthly income exceeded her ordinary and necessary expenses by \$853.33, OWCP did not abuse its discretion in requiring recovery by deducting \$500.00 every 28 days from each of her continuing compensation payments.<sup>31</sup>

### **CONCLUSION**

The Board finds that an overpayment of compensation was created in the amount of \$22,560.44 for the period September 3, 1999 through November 11, 2018. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

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<sup>28</sup> See *A.C.*, *supra* note 19; see also *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>29</sup> 20 C.F.R. § 10.437; see also *supra* note 20.

<sup>30</sup> 20 C.F.R. § 10.441; see *Steven R. Cofrancesco*, 57 ECAB 662 (2006).

<sup>31</sup> *A.C.*, *supra* note 19; see *G.C.*, Docket No. 18-1062 (issued December 4, 2018).

**ORDER**

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

Issued: June 11, 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