

of the overpayment by deducting \$340.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On December 29, 2009 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2009 he injured his neck, back, left elbow, left ankle, and left hip in a motor vehicle accident while in the performance of duty. OWCP accepted the claim for thoracic sprain and lumbar sprain. It subsequently expanded acceptance of the claim to include spinal stenosis, thoracic/lumbar radiculopathy, and a pathological fracture of the vertebra. OWCP paid appellant wage-loss compensation on the periodic rolls for total disability from February 14, 2010 to June 2, 2013, for partial disability from June 3, 2013 through September 19, 2015, and for total disability beginning September 20, 2015.³

On February 17, 2017 the Office of Personnel Management (OPM) advised that appellant was eligible for postretirement basic life insurance (PRBLI) with no reduction, effective August 20, 2016. It indicated that his salary for benefits for the Federal Employees' Group Life Insurance (FEGLI) coverage was \$69,065.00.

On April 19, 2017 OWCP adjusted appellant's compensation to reflect its deduction of \$141.55 for PRBLI premiums from April 2 through 29, 2017. It indicated that it was making the change in accordance with the February 17, 2017 letter from OPM.

On June 9, 2017 OPM advised that appellant had elected PRBLI with a 75 percent reduction, effective June 1, 2017. It again indicated that the date to commence deducting PRBLI was August 20, 2016.

On a form dated October 18, 2017 OWCP indicated that it had ceased withholding premiums for PRBLI, effective October 14, 2017.

Appellant telephoned OWCP on multiple occasions questioning when he would receive a refund in premiums for PRBLI withheld after June 1, 2017.

In a May 24, 2018 fiscal payment worksheet, OWCP calculated that from June 1 through October 14, 2017 it had deducted \$141.56 in PRBLI premiums every 28 days, or \$5.06 per day. It multiplied \$5.06 by 24, the number of days from June 1 through 24, 2017, to find \$121.44. OWCP then multiplied \$141.56 by 5, the number of pay periods it found had occurred from June 25 through October 14, 2017, to find \$707.80, or a total refund amount owed to appellant of \$829.24 (\$121.44 + 707.80).

In a June 22, 2018 fiscal payment worksheet, OWCP found that there were 4 rather than 5 pay periods from June 25 through October 14, 2017. It determined that from June 25 through October 14, 2017 it had deducted \$566.24 in premiums for PRBLI, or \$141.56 multiplied by four,

³ By decision dated July 26, 2013, OWCP found that appellant received an overpayment of wage-loss compensation in the amount of \$763.36 because he returned to part-time employment on May 23, 2013, but continued to receive compensation for total disability through June 1, 2013.

which it added to the \$121.44 deduction in premiums from June 1 through 24, 2017, to find an underpayment due to the withholdings of premiums for PRBLI of \$687.68. OWCP attached computer records setting forth the four pay periods as June 25 through July 22, 2017, July 23 through August 19, 2017, August 20 through September 16, 2017, and September 17 through October 14, 2017.

OWCP, on June 22, 2018, paid appellant \$687.68 in supplemental disability compensation as it had improperly withheld PRBLI premiums for the period June 1 through October 14, 2017.

On July 17, 2018 OWCP paid appellant \$829.24 in compensation as a refund for its deduction of PRBLI premiums for the period June 1 through October 14, 2017.

In an internal e-mail message dated August 22, 2018, OWCP noted that it had issued appellant supplemental payments of \$687.68 in June 2018 and \$829.24 in July 2018. It advised that the June 29, 2018 payment was correct.

In a preliminary overpayment determination dated September 13, 2018, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$829.24 because it had issued him two payments as refunds for its erroneous deduction of PRBLI premiums from June 1 through October 14, 2017. It found that the refund of \$829.24 was erroneously issued and constituted an overpayment of compensation. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation so that it could consider waiver of recovery of the overpayment or made a determination regarding the method of recovery. OWCP notified appellant that failure to submit the requested information within 30 days would result in the denial of waiver of record of the overpayment. Additionally, it notified him 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 prerecoupment hearing.

Appellant did not respond to the preliminary overpayment determination within the time allotted.

By decision dated November 9, 2018, OWCP found that appellant had received an overpayment of compensation in the amount of \$829.24 as it had erroneously issued him a check of \$829.24 as a refund for its withholding of PRBLI premiums from June 1 through October 14, 2017. It determined that he was without fault in the creation of the overpayment of compensation, but denied waiver of recovery of the overpayment, noting that he had not responded to its preliminary overpayment determination or provided any evidence regarding his financial situation. OWCP required recovery of the overpayment by deducting \$340.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

FECA⁴ 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 his or her 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 waived⁸ 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 to continue basic and optional life insurance (OLI) coverage, in which case the schedule of deductions made will be used to withhold premiums from his annuity or compensation payments.¹⁰ Basic life 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 OLI coverage, which is accomplished by authorizing withholdings from his 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 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

⁴ *Supra* note 1.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

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).

coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$829.24 for the period June 1 through October 14, 2017.

OPM advised OWCP on February 17, 2017 that appellant had elected PRBLI with no reduction. OWCP adjusted his compensation effective April 2, 2017 to reflect the change in deductions for life insurance premiums. On June 9, 2017 OPM notified OWCP that appellant had elected PRBLI with a 75 percent reduction effective June 1, 2017. As discussed above, Option A life insurance, which is basic coverage subject to a maximum 75 percent reduction, continues at no additional cost.¹⁴ However, OWCP did not cease deducting premiums for PRBLI from appellant's wage-loss compensation until October 14, 2017.

On June 22, 2018 OWCP refunded appellant \$687.68 in supplemental compensation for its erroneous deduction of PRBLI premiums for the period June 1 through October 14, 2017. On July 17, 2018 it again paid him \$829.24 in supplemental compensation for its deduction of premiums for PRBLI for the same period. Appellant thus received an overpayment of compensation as he received duplicate reimbursement from OWCP for its deduction of premiums for PRBLI covering the same period.¹⁵

The Board finds that the amount of the overpayment is \$829.24. OWCP calculated the amount that it owed appellant by multiplying \$5.06, the amount that it had deducted daily for PRBLI premiums, by 24, the number of days from June 1 through 24, 2017, to find \$121.44. It next multiplied \$141.56, the amount it had deducted for PRBLI premiums every 28 days, by the number of pay periods from June 25 through October 14, 2017. On May 24, 2018 OWCP determined that there were five pay periods from June 25 through October 14, 2017, or \$141.56, multiplied by 5, which yielded \$707.80 and a total amount to be refunded of \$829.24.

On June 22, 2018 OWCP determined that there were only four pay periods from June 24 through October 14, 2017. It multiplied 4 by \$141.56, to find \$566.24, which it added to \$121.44, the overpayment created from June 1 through October 14, 2017, to find a total underpayment of \$687.68. The record supports that there were four pay periods from June 24 through October 14, 2017, consisting of the pay periods June 25 through July 22, 2017, July 23 through August 19, 2017, August 20 through September 16, 2017, and September 17 through October 14, 2017. OWCP properly paid appellant \$687.68 in repayment for its deduction of premiums for PRBLI from June 1 through October 14, 2017. A second payment of \$829.24 was issued for its deduction

¹³ See *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

¹⁴ *Id.*

¹⁵ *E.J.*, Docket No. 15-1734 (issued April 12, 2016).

of premiums for PRBLI for the same period as the first payment. The Board finds that this constituted an overpayment of compensation.¹⁶

On appeal appellant challenges the amount of the overpayment of compensation and questions why the date of June 2017 was used in determining the overpayment. He maintains that he was underpaid from April through October 2017, a period of eight months. As discussed, however, OPM advised that appellant had elected PRBLI with a 75 percent reduction, which required no deductions by OWCP, beginning June 1, 2017. Prior to this time, appellant had elected PRBLI with no reduction, and thus OWCP had properly deducted premiums for PRBLI prior to June 1, 2017, the date his election changed.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA 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.”¹⁷ Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$829.24 overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹ Appellant, however, has the responsibility to provide the appropriate financial information to OWCP.²⁰

In its preliminary overpayment determination dated September 13, 2018, OWCP clearly explained the importance of providing a completed overpayment questionnaire and financial information, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. It advised appellant that

¹⁶ See generally *M.M.*, Docket No. 17-1081 (issued November 15, 2017); *J.W.*, Docket No. 14-1282 (issued October 1, 2015).

¹⁷ 5 U.S.C. § 8129(a)-(b); see *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁸ 20 C.F.R. § 10.438.

¹⁹ *Id.* at § 10.436.

²⁰ *Id.* at § 10.438; see also *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

it would deny waiver if he failed to furnish the requested financial information within 30 days. Appellant did not, however, respond to the preliminary overpayment determination.

As appellant failed to submit the overpayment recovery questionnaire with supporting documentation, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²¹ In requesting waiver, the overpaid individual has the responsibility for submitting financial information.²² Appellant failed to furnish documentation, as required by section 10.438 of its regulations; therefore, he was not entitled to waiver.²³ The Board, consequently, finds that OWCP properly denied waiver of recovery of the overpayment of compensation.²⁴

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, when an overpayment 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.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment of compensation by deducting \$340.00 every 28 days from appellant's continuing compensation payments.

Appellant did not submit a completed overpayment recovery questionnaire or other financial documentation as requested by OWCP. OWCP's regulations provide that the overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁶ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁷ As appellant did not submit financial information to OWCP as requested, the Board finds that there

²¹ See *supra* note 17; see also *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

²² See *supra* note 18; see also *R.O.*, Docket No. 18-0076 (issued August 3, 2018).

²³ *Id.*; see also *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

²⁴ See *E.S.*, Docket No. 18-1293 (issued January 28, 2019).

²⁵ 20 C.F.R. § 10.441; see *E.K.*, *supra* note 23.

²⁶ *Id.* at §10.438.

²⁷ *S.M.*, Docket No. 18-1525 (issued April 12, 2019); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (September 2018).

is no evidence in the record to show that OWCP abused its discretion in directing recovery of the \$829.24 overpayment at the rate of \$340.00 per compensation period.²⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$829.24 for the period June 1 through October 14, 2017. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$340.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁸ See *S.M.*, *id.*