

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

_____		)	
<b>G.L., Appellant</b>	)	)	
	)	)	
<b>and</b>	)	)	<b>Docket No. 19-0297</b>
	)	)	<b>Issued: October 23, 2019</b>
<b>U.S. POSTAL SERVICE, RIVER DISTRICT</b>	)	)	
<b>POST OFFICE, Portland, OR, Employer</b>	)	)	
_____		)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 20, 2018 appellant filed a timely appeal from a September 4, 2018 merit decision and an October 26, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> Appellant also filed a timely request for oral argument. After exercising its discretion, by order dated September 4, 2019, the Board denied his request finding that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0297 (issued September 4, 2019).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the October 26, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$771.36 for the period November 11, 2017 through April 28, 2018; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$50.00 from appellant's continuing compensation benefits, every 28 days; and (4) whether OWCP's Branch of Hearings and Review properly denied appellant's September 24, 2018 request for a precoupment hearing.

## **FACTUAL HISTORY**

On December 21, 2010 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2010 he sustained right wrist, right leg, and lower back injuries when he slipped and slid down steps while delivering mail. He stopped work on December 14, 2010. OWCP accepted the claim for a right wrist sprain, right ulnar nerve lesion, right pelvic region and thigh joint disorders, and closed lumbar vertebra dislocation.

By letter dated September 4, 2014, OWCP notified appellant that he was placed on the periodic compensation rolls effective August 11, 2014 with regular payments beginning August 24, 2014. The letter indicated that deductions from the regular payments were being made for basic life insurance in the amount of \$17.10 and \$126.50 for optional life insurance. OWCP advised appellant that, if he had optional life insurance or health insurance benefits coverage, and no deduction was made that he should contact OWCP as he was responsible for those premiums.

In an April 18, 2018 letter, the Office of Personnel Management (OPM) advised OWCP that appellant, as a compensation, was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that he had elected postretirement basic life insurance (PRBLI) coverage effective November 11, 2017, with no reduction.<sup>4</sup>

By notice dated June 29, 2018, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$771.36 because PRBLI premiums had not been properly deducted from his compensation payments for the period November 11, 2017 through April 28, 2018. It provided a calculation of the overpayment, and found that he was not at fault in its creation.<sup>5</sup> OWCP advised appellant of his right to request a telephone conference, a final decision based on the written evidence, or a precoupment hearing, if he objected to the decision or requested waiver of the recovery of the overpayment. It requested that he complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting

---

<sup>4</sup> OPM attached a Standard Form 2818, signed by appellant on January 23, 2018, in which he elected continuation of PRBLI benefits.

<sup>5</sup> OWCP provided a memorandum for the file explaining the overpayment calculation. It noted that, for the period November 11, 2017 through April 28, 2018, no PRBLI premiums were deducted from appellant's compensation benefits.

financial documentation. OWCP mailed the preliminary determination to appellant's last known address and afforded him 30 days to provide the requested information.

On August 9, 2018 OWCP received appellant's overpayment action request form, dated July 16, 2018, in which he requested a telephone conference. Appellant also indicated that he disagreed with the fact and amount of the overpayment, believed the overpayment occurred through no fault of his own, and requested waiver of recovery of the overpayment. He submitted an overpayment recovery questionnaire form (Form OWCP-20), in which he noted monthly income of \$994.00 from his spouse<sup>6</sup> and \$11,870.00 in funds. Monthly expenses were listed totaling \$3,384.00 which included \$1,847.00 for rent or mortgage, \$360.00 for food, \$150.00 for clothing, \$264.00 for utilities, \$663.00 for other expenses, and \$100.00 monthly payment to NW Priority Credit Union.<sup>7</sup>

A September 4, 2018 memorandum of conference, noted an increase in certain expenses with current expenses listed as \$1,997.00 for rent and property tax, \$175.00 for food, and \$364.00 for utilities. Appellant also indicated that he had \$663.00 in miscellaneous expenses which included home and automobile insurance.<sup>8</sup>

By decision dated September 4, 2018, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$771.36 for the period November 11, 2017 through April 28, 2018, because OPM PRBLI premiums were not properly deducted from his compensation payments for that period. It found that he was not at fault in the creation of the overpayment, but denied waiver of recovery because the evidence did not establish that recovery of the overpayment would cause undue hardship or defeat the purpose of FECA. OWCP directed recovery of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments.

On October 2, 2018 OWCP received an overpayment action request form, dated September 24, 2018, in which appellant requested a prerecoupment hearing. Appellant asserted that he believed that PRBLI premium payments were the responsibility of OPM. He also attached a completed overpayment recovery questionnaire form.

By decision dated October 26, 2018, OWCP's Branch of Hearings and Review denied appellant's request, finding that he did not request a hearing on the preliminary overpayment determination, and that the final overpayment determination was not subject to a hearing pursuant to 5 U.S.C. § 8124(b).

---

<sup>6</sup> Appellant noted that he received OWCP compensation, but did not list the amount. The record reveals he received a net amount of \$2,726.76 for the period April 29 through May 26, 2018.

<sup>7</sup> Appellant listed an outstanding balance of \$4,709.00

<sup>8</sup> Appellant stated that the expenses had increased because his 31-year-old son had moved in with appellant and his spouse.

## LEGAL PRECEDENT -- ISSUE 1

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 his or her duty.<sup>9</sup> 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.<sup>10</sup>

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>11</sup> The coverage for basic life insurance is effective unless waived<sup>12</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>13</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 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).<sup>14</sup>

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.<sup>15</sup>

## ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$771.36 for the period November 11, 2017 through April 28, 2018.

---

<sup>9</sup> 5 U.S.C. § 8102(a).

<sup>10</sup> *Id.* at 8129(a).

<sup>11</sup> *Id.* at § 8702(a).

<sup>12</sup> *Id.* at § 8702(b).

<sup>13</sup> *Id.* at § 8707.

<sup>14</sup> *See D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

<sup>15</sup> 5 U.S.C. § 8707(d). *See R.W.*, Docket No. 19-0451 (issued August 7, 2019); *D.H.*, *id.*; *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

OPM notified OWCP on April 18, 2018 that appellant had elected PRBLI coverage with no reduction effective November 11, 2017. OWCP began deducting the proper amount for PRBLI coverage from appellant's wage-loss compensation on April 29, 2018. It calculated the amount of the resulting overpayment for the period November 11, 2017 through April 28, 2018 to be \$771.36. The record contains a memorandum for the file explaining the overpayment calculation and how the overpayment occurred. As noted, 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>16</sup>

The Board finds that OWCP properly calculated the amount of the overpayment and provided a clear and detailed explanation of the fact and amount of the overpayment. As OWCP failed to properly deduct PRBLI premiums from November 11, 2017 through April 28, 2018, appellant received an overpayment of compensation of \$771.36 during this period.<sup>17</sup>

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

Section 8129 of FECA<sup>18</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>19</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 OWCP from data provided by the Bureau of Labor Statistics.<sup>20</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, savings accounts, mutual funds and certificates of deposits.<sup>21</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>22</sup>

---

<sup>16</sup> *Id.*

<sup>17</sup> *J.C.*, Docket No. 17-1791 (issued February 28, 2018).

<sup>18</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>19</sup> *A.C.*, *id.*; *see V.T.*, Docket No. 18-0628 (issued October 25, 2018).

<sup>20</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a) (September 2018).

<sup>21</sup> *Id.*

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

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>23</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>24</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

OWCP found that appellant was without fault in the creation of the overpayment of compensation. The fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering the overpayment.<sup>25</sup> 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 he requires substantially all of his income to meet current ordinary and necessary living expenses and that his 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 his income to meet ordinary living expenses. Based upon appellant's July 16, 2018 overpayment recovery form and the record, OWCP found that he had monthly expenses of \$3,384.00 and monthly income of \$3,720.76. While during the telephone conference appellant indicated that his food bill had increased to \$175.00, his rent and property tax had increased to \$1,997.00, utilities had increased to \$364.00, and he had miscellaneous monthly expenses of \$663.00 as well as a \$100.00 monthly payment to NW Priority Credit union, resulting in total monthly expenses of \$3,659.00, no corroborating financial evidence was submitted. As appellant's monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, he did not need substantially all of his income for ordinary and necessary living expenses.<sup>28</sup> Appellant also listed net assets in the amount of \$11,870.00, which exceeds his resource base.

Additionally, the evidence of record does not demonstrate that recovery of the overpayment would be against equity and good conscience. Appellant did not submit any evidence that he had relied upon the incorrect payments to his detriment or that he would experience severe financial

---

<sup>23</sup> 20 C.F.R. § 10.437.

<sup>24</sup> *Id.* at § 10.437(b)(1).

<sup>25</sup> *D.H.*, *supra* note 14.

<sup>26</sup> *J.C.*, Docket No.19-0122 (issued June 11, 2019); *A.C.*, *supra* note 18; *see also E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>27</sup> *Supra* note 20.

<sup>28</sup> *See J.C.*, *supra* note 26; *A.C.*, *supra* note 18; *see also M.P.*, Docket No. 18-0902 (issued October 16, 2018).

hardship attempting to repay the debt.<sup>29</sup> Consequently, OWCP properly denied waiver of recovery of the overpayment.

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

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>30</sup> Section 10.441(a) of the regulations<sup>31</sup> provides:

“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 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 any hardship.”<sup>32</sup>

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

The Board finds that OWCP properly required recovery of the overpayment by deducting \$50.00 every 28 days from appellant's continuing compensation payments.

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 his monthly income exceeded his ordinary and necessary expenses by more than \$50.00, OWCP did not abuse its discretion in requiring recovery by deducting \$50.00 every 28 days from each of his continuing compensation payments.

### **LEGAL PRECEDENT -- ISSUE 4**

OWCP's regulations provide that a claimant may request a prerecoupment hearing with respect to an overpayment.<sup>33</sup> Failure to request the prerecoupment hearing within 30 days shall constitute a waiver of the right to a hearing.<sup>34</sup> The only right to a review of a final overpayment

---

<sup>29</sup> *Supra* note 23.

<sup>30</sup> *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Albert Pinero*, 51 ECAB 310 (2000) *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>31</sup> 20 C.F.R. § 10.441(a).

<sup>32</sup> *Id.*

<sup>33</sup> 20 C.F.R. § 10.432. *See D.H.*, *supra* note 14; *E.M.*, Docket No. 17-1502 (issued February 22, 2019).

<sup>34</sup> *Id.*

decision is with the Board.<sup>35</sup> The hearing provisions of section 8124(b) of FECA<sup>24</sup> do not apply to final overpayment decisions.<sup>36</sup>

#### **ANALYSIS -- ISSUE 4**

The Board finds that OWCP's Branch of Hearings and Review properly denied appellant's September 26, 2018 request for a precoupment hearing.

OWCP's June 29, 2018 preliminary determination of overpayment provided appellant with a right to request a precoupment hearing within 30 days. The record shows that OWCP properly mailed its June 29, 2018 preliminary determination to appellant's last known address. Appellant requested a telephone conference, which was held on September 4, 2018. By decision dated September 4, 2018, OWCP finalized its preliminary overpayment determination. On October 2, 2018 OWCP received an overpayment action request form dated September 24, 2018 from appellant contesting the overpayment and addressed to OWCP's Branch of Hearings and Review.

The Board finds that as appellant's request form was mailed to the Branch of Hearings and Review, it was properly treated as a request for a hearing. OWCP's regulations, however, provide that when a final overpayment decision is issued, there is no right to a hearing or a review of the written record, and OWCP does not have discretion to grant such a request. The only right to appeal is with the Board.<sup>37</sup> Appellant's September 24, 2018 request for a precoupment hearing was made after the final overpayment determination. Therefore, the Board finds that OWCP properly denied appellant's request for a precoupment hearing.

#### **CONCLUSION**

The Board finds that an overpayment of compensation was created in the amount of \$771.36 for the period November 11, 2017 through April 28, 2018. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery by deducting \$50.00 every 28 days from appellant's continuing compensation payments. Additionally, OWCP's Branch of Hearings and Review properly denied appellant's September 24, 2018 request for a precoupment hearing.

---

<sup>35</sup> 20 C.F.R. § 10.440(b).

<sup>36</sup> 5 U.S.C. § 8124(b).

<sup>37</sup> *Supra* note 35.



**ORDER**

**IT IS HEREBY ORDERED THAT** the October 26 and September 4, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 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