

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

J.P., widow of J.P., Appellant)	
)	
and)	Docket No. 18-1194
)	Issued: April 28, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Milford, CT, Employer)	
)	

Appearances:

Francesco P. Sandillo, IV, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 22, 2018 appellant, through her representative, filed a timely appeal from an April 23, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP established that the employee received an overpayment of compensation, for which he was not at fault, in the amount of \$9,384.14 during the period July 16, 2000 through December 12, 2017 because life insurance premiums were not

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

properly deducted; and (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 1, 2000 appellant's husband, the employee, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury on May 31, 2000 due to loading mail trays into his postal vehicle while in the performance of duty. He stopped work on May 31, 2000. OWCP accepted appellant's claim for lumbosacral sprain and paid the employee wage-loss compensation on the supplemental rolls commencing July 16, 2000 and on the periodic rolls commencing August 10, 2003. On October 17, 2003 the employee was granted disability retirement.

On December 15, 2017 appellant advised OWCP that the employee died on December 12, 2017. She submitted a death certificate listing the cause of death as metastatic esophageal cancer.

In a January 18, 2018 letter, entitled "life insurance adjustment request," received on January 26, 2018, the Office of Personal Management (OPM) requested that OWCP refer to an attached OPM document dated November 24, 2003 and make an adjustment, if necessary. In the attached document, OPM advised that the final salary on which the employee's Federal Employees' Group Life Insurance (FEGLI) was based was \$44,583.00. It further indicated that the employee was enrolled in basic life insurance (BLI) with deduction of premiums beginning on "compensation commencement date" and that he was enrolled in post-retirement basic life insurance (PRBLI) at 50 percent reduction with deduction of premiums beginning on October 18, 2003.

OWCP received compensation payment history documents covering the period July 16, 2000 through December 12, 2017 which revealed that deductions for BLI and PRBLI premiums were not made for various periods between these dates.

In a February 26, 2018 letter, OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$9,384.14 because BLI premiums were not deducted from the employee's wage-loss compensation for the periods July 16 to October 20, 2000, April 20 to November 5, 2001, and May 3, 2003 to July 1, 2015, and PRBLI premiums were not deducted from his wage-loss compensation for the period October 18, 2003 to December 12, 2017.³ It also made a preliminary finding that appellant, the deceased employee's spouse, was without fault in the creation of the overpayment. OWCP advised appellant regarding her appeal options, including challenging the fact/amount of the overpayment and requesting waiver of recovery of the overpayment. It directed her to complete and return an overpayment recovery questionnaire form (Form OWCP-20) and submit financial documentation supporting her claimed income and expenses.

³ The preliminary determination was addressed to the Estate of the employee in care of the appellant.

Appellant requested waiver of recovery of the overpayment and submitted a Form OWCP-20 dated March 16, 2018 in which she delineated her monthly income, monthly expenses, and assets. No supporting financial information was received.

By decision dated April 23, 2018, OWCP finalized its preliminary determination that a \$9,384.14 overpayment was created because BLI premiums were not deducted from the employee's wage-loss compensation for the periods July 16 to October 20, 2000, April 20 to November 5, 2001, and May 3, 2003 to July 1, 2015, and PRBLI premiums were not deducted from his wage-loss compensation for the period October 18, 2003 to December 12, 2017. It found that appellant was without fault in the creation of the overpayment, but that waiver of recovery was not warranted. OWCP noted that she failed to submit financial documentation in support of her request for waiver of recovery of the overpayment. It directed appellant to pay the lump sum amount of \$9,384.14 within 30 days.⁴

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 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 The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.⁷

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the forms of OLI.⁸ The coverage for BLI is effective unless waived,⁹ and premiums for BLI and OLI coverage are withheld from the employee's pay.¹⁰ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹¹ BLI coverage shall be continued without cost to an

⁴ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *A.B.*, Docket No. 18-0915 (issued October 24, 2018); *Miguel A. Muniz*, 54 ECAB 217 (2002). As OWCP did not seek recovery from continuing compensation benefits, the Board does lack jurisdiction over the method of recovery of the overpayment in this case. *See* 20 C.F.R. § 10.441.

⁵ 5 U.S.C. § 8102(a).

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

⁷ *Id.* at § 10.435.

⁸ 5 U.S.C § 8702(a); *see also I.J.*, Docket No. 19-1672 (issued March 10, 2020).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

¹¹ *Id.* at § 8706.

employee who retired or began receiving compensation on or before December 31, 1989.¹² However, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹³

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).¹⁴

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.¹⁵ Any 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.¹⁶

When an under withholding 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.¹⁷

ANALYSIS -- ISSUE 1

The Board finds OWCP has not met its burden of proof to establish that the employee received an overpayment of compensation.

OWCP found that an overpayment of compensation in the amount of \$9,384.14 was created because it failed to deduct BLI premiums from the employee's wage-loss compensation for the periods July 16 to October 20, 2000, April 20 to November 5, 2001, and May 3, 2003 to July 1, 2015, and failed to deduct PRBLI premiums from his wage-loss compensation for the period

¹² *Id.* at § 8707(b)(2).

¹³ *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

¹⁴ *G.L.*, Docket No. 19-0297 (issued October 23, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁵ 5 C.F.R. § 870.504(a)(1).

¹⁶ *Id.* at § 870.504(b).

¹⁷ 5 U.S.C. § 8707(d); *see also B.B.*, *supra* note 13.

October 18, 2003 to December 12, 2017. OWCP reviewed the fiscal record and determined that the employee had elected BLI and PRBLI and it explained that premiums had not been deducted for the appropriate periods. The record includes OPM's November 24, 2003 letter notifying OWCP that the employee had elected BLI and PRBLI. The record also includes computer printouts showing that proper life insurance premium deductions were not made between July 16, 2000 and December 12, 2017.

The Board finds, however, that OWCP failed to adequately support its determination that the employee, now deceased, received a \$9,384.14 overpayment due to its failure to properly deduct premiums for BLI and PRBLI. While the record includes communications from OPM regarding the employee's BLI and PRBLI coverage, the record does not contain evidence that the employee affirmatively signed a document electing BLI or PRBLI coverage. The record does not contain a signed election form showing which coverage he actually selected or if he 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 in order to establish the fact of overpayment of compensation.¹⁸ As OWCP has not factually established the employee's election of BLI and PRBLI on the relevant dates, it has not met its burden of proof to establish that a \$9,384.14 overpayment was created between July 16, 2000 and December 12, 2017, as alleged.

Also, a review of OWCP's preliminary determination demonstrates that it notified appellant that she had received an overpayment of compensation in the amount of \$9,384.14. However, appellant has not been established to be a federal employee nor was she a beneficiary of the FECA compensation which is the basis of the claimed overpayment.¹⁹ For that reason, OWCP was required to follow certain procedures to protect her, as a nonbeneficiary, and that protection is required in overpayment cases wherein it has knowledge that a beneficiary with an existing overpayment has died.²⁰ Its procedures for recovery from a deceased debtor's estate, in effect at the time of OWCP's April 23, 2018 decision, specifically provide instructions that:

“(b) Upon learning that a claimant with an existing overpayment has died, the district office shall immediately contact the U.S. Office of Personnel Management (OPM) to determine the availability of any OPM benefits payable at the time of death that may be administratively offset, *e.g.*, basic employee death benefits, survivor annuity benefits or lump sum refund of the deceased employee's retirement contributions (5 C.F.R. § 831.1805). If such OPM benefits are available for offset, the district office must follow the OPM referral procedures set forth in Part 6.300.9.

(i) Many state statutes provide that an unsecured debt may not be collected from an estate one year after the death of the decedent.

¹⁸ *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

¹⁹ 20 C.F.R. § 10.5 defines a “beneficiary” of FECA compensation as an individual who is entitled to a benefit under FECA.

²⁰ See *R.R.*, Docket No. 18-0803 (issued April 25, 2019).

(ii) As many states require publication of a notice to creditors, a written claim against the estate should generally be presented within four months from the date of death.”²¹

At the time of OWCP’s April 23, 2018 decision, its procedures for recovery from a deceased debtor’s estate also provided that “[o]nce the estate has been closed and the proceeds distributed, collection action must be terminated.”²²

The Board therefore finds that OWCP has not met its burden of proof to establish that an overpayment of compensation occurred as alleged.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to establish that the employee received an overpayment of compensation.²³

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2018 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: April 28, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees’ Compensation Appeals Board

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees’ Compensation Appeals Board

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(e)(2)(b) (June 2009).

²² *Id.* at Debt Liquidation, *Recovery from a Deceased Debtor’s Estate*, Chapter 6.300.15 (May 2004).

²³ In light of the Board’s disposition of issue 1, issue 2 is rendered moot.