

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

F.F., Appellant)	
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)	
and)	Docket No. 19-1630
)	Issued: April 7, 2020
U.S. POSTAL SERVICE, LA SIERRA POST OFFICE, Riverside, CA, Employer)	
)	
)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2019 appellant, through counsel, filed a timely appeal from a June 27, 2019 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.³

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.*

³ The Board notes that appellant submitted additional evidence to OWCP following the June 27, 2019 decision. 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 \$22,124.51 for the period January 28, 2003 through May 26, 2018 because life insurance premiums were improperly deducted; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

On November 26, 2001 appellant, then a 54-year-old modified rehabilitation distribution clerk, filed an occupational disease claim (Form CA-2) alleging that on November 19, 2001, he developed low back pain and muscle spasms radiating down both legs as a result of his federal employment. He stopped work on November 21, 2001. On January 9, 2002 OWCP accepted the claim for a lumbar sprain under OWCP File No. xxxxxx083.⁴ It paid appellant wage-loss benefits on the supplemental roll as of May 18, 2002 and on the periodic roll as of June 13 2004.

In a letter dated September 28, 2004, the Office of Personnel Management (OPM) advised appellant that OWCP had indicated that he had elected OWCP disability benefits as of May 18, 2002. It explained that appellant's Federal Employees Retirement System (FERS) annuity was suspended effective June 1, 2004 and the administration of his health and life insurance was transferred to OWCP effective June 1, 2004.

On May 4, 2018 OPM advised OWCP that as a compensationner appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI). It requested that OWCP deduct for Code Y5: Basic -- no reduction, option B-5X no reduction, and option C-5X no reduction. OPM further advised that appellant's postretirement election was no reduction and the commencement date for the postretirement deductions was January 28, 2003. It indicated that OWCP should continue the option B and option C premiums as appellant had elected to keep the option B and C coverage past the age of 65.

In a January 25, 2018 letter to appellant, OWCP advised that all FEGLI optional life insurance (OLI)premium deductions should automatically stop when a claimant reaches age 65 unless an election is made to continue OLI coverage beyond this age. The letter informed him that "due to computer error, OWCP has deducted OLI premiums past your 65th birthday without having an OLI post-65 election documented to your case file. Consequently, your OLI premium deductions stopped after your last birthday. OWCP does not have authorization to reinstate these deductions without having documentation from OPM instructing us to do so." Appellant was then requested to inform OPM of his post-65 OLI election. He selected the option to continue his current OLI at no reduction and signed the form on February 7, 2018.

OWCP compensation payment history records indicate that from May 18, 2002 until May 4, 2013 no postretirement basic life insurance (PRBLI) premiums were deducted. However

⁴ OWCP File No. xxxxxx083 is the master file for three combined claims. On November 22, 1991 OWCP accepted appellant's claim for a lumbosacral strain under File No. xxxxxx901. On August 9, 1989 it accepted his claim for a right knee strain, right ankle strain, right shoulder sprain, and low back sprain under claim No. xxxxxx479.

from May 5, 2013 until May 26, 2018 deductions were made. OLI deductions were generally made from June 13, 2004 until July 22, 2017.

In a preliminary overpayment determination dated October 30, 2018, OWCP advised appellant that he had received an overpayment of compensation in the amount of \$22,124.51 from January 28, 2003 through May 26, 2018 because incorrect deductions for OLI and PRBLI premiums were made from his continuing compensation benefits. It explained that on May 4, 2018 OPM confirmed that he made a retroactive election for OLI and PRBLI, and that the deductions were effective January 28, 2003. OWCP explained that appellant's compensation payments were not adjusted until May 27, 2018, and incorrect deductions were made for his OLI and PRBLI premiums for the period January 28, 2003 through May 26, 2018. It provided an overpayment memorandum which calculated the overpayment amounts from January 28, 2003 to May 27, 2018. It further determined that appellant was not at fault in the creation of the overpayment because it had incorrectly deducted the insurance premiums and it was not shown that he had actual knowledge of the calculation error. Appellant was informed that, if he believed the overpayment should be waived, he should complete an overpayment recovery questionnaire (Form OWCP-20) and submit detailed supporting financial documentation within 30 days.

On November 6, 2018 appellant requested a telephonic prerecoupment hearing before a representative of the Branch of Hearings and Review. During the March 11, 2019 hearing appellant's counsel argued that OWCP should prove that it paid appellant's insurance premiums to OPM during the time period in question before an overpayment could be declared. He noted that appellant received \$4,000.00 per month for a service-related disability from the Department of Veterans Affairs and that he had other assets, to include \$100,000.00 his checking account.

Appellant provided a completed Form OWCP-20. He indicated that he had monthly income of \$2,820.00 from OWCP, \$847.80 related to his wife's Social Security benefits, and \$4,000.00 related to other benefits, totaling \$7,667.80. Appellant noted monthly expenses of \$1,500.00 for food, \$800.00 for clothing, \$1,000.00 for utilities, and \$900.00 for other expenses, totaling \$4,200.00. He did not list his assets.

By decision dated June 27, 2019, an OWCP hearing representative determined that appellant received an overpayment of compensation in the amount of \$22,124.51 for the period January 28, 2003 through May 26, 2018, because his life insurance premiums were incorrectly deducted. The hearing representative found that appellant was not at fault in the creation of the overpayment, but that waiver of recovery was denied as appellant's assets exceeded the allowable resource base. OWCP directed that \$300.00 be withheld from appellant's continuing compensation payments every 28 days in order to recover the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the OLI options.⁵ The coverage for BLI is effective unless

⁵ 5 U.S.C. § 8702(a).

waived⁶ and premiums for BLI and OLI coverage are withheld from the employee's pay.⁷ Upon retirement or upon separation from the employing establishment or being placed on 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.⁸ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his compensation.¹⁰

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).¹¹ 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.¹² An employee who does not file a life insurance election with his or her employing office, in a manner designated by OPM, specifically electing a type of optional insurance, is considered to have waived it and does not have that type of optional insurance coverage.¹³

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.¹⁴

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ *Id.* at § 8707(b)(2).

¹⁰ *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).

¹¹ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 C.F.R. § 870.504(a)(1).

¹³ *Id.* at § 870.504(b).

¹⁴ 5 U.S.C. § 8707(d); *see also B.B.* and *S.B.*, *supra* note 10.

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$22,124.51 for the period January 28, 2003 through May 26, 2018.

OWCP found that an overpayment of compensation in the amount of \$22,124.51 was created for the period January 28, 2003 through May 26, 2018 because it incorrectly deducted premiums for OLI and PRBLI. It found that on May 4, 2018 OPM had advised appellant that he was eligible to continue his FEGLI insurance. OWCP also found that appellant had elected OLI and PRBLI retroactive to January 28, 2003 by signing an OWCP letter dated January 25, 2018 on February 7, 2018. The Board finds however that the January 25, 2018 letter to appellant advised him that OWCP had deducted OLI premiums past his 65th birthday, without having an OLI post-65 election on file. Appellant was then asked to complete a post-65 OLI election to continue his deductions. He selected the OLI election and advised, "I want to continue my current OLI at no reduction." The letter form appellant signed on February 7, 2018 did not specifically advise or request that he wished to elect OLI or PRBLI benefits retroactive to January 28, 2003. The current record does not include any other FEGLI election form signed by appellant indicating his life insurance elections as of January 28, 2003.

The record also includes computer printouts showing that no deductions had been made for PRBLI from May 18, 2002 until May 4, 2013, but from May 5, 2013 until May 26, 2018 deductions were made. OLI deductions were generally made from June 13, 2004 until July 22, 2017. Also OWCP's January 25, 2018 letter indicated that OLI deductions had been made until appellant's 65th birthday.

The Board finds that OWCP failed to adequately support its determination that appellant received an overpayment of compensation for the period January 28, 2003 through May 26, 2018. While the record substantiates that appellant elected that his OLI be continued on February 7, 2018, the record does not contain evidence that appellant signed a document electing OLI or PRBLI coverage as of January 28, 2003. 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.¹⁵ OWCP has not factually established appellant's life insurance election which was in effect on January 28, 2003. Furthermore, the record indicates that some deductions were inexplicably made. OWCP has therefore not met its burden of proof to establish that appellant received an overpayment of compensation from January 28, 2003 through May 26, 2018.¹⁶

¹⁵ *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).

¹⁶ In light of the Board's disposition of the overpayment, the remaining issues are rendered moot.

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$22,124.51 for the period January 28, 2003 through May 26, 2018.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 7, 2020
Washington, DC

Christopher J. Godfrey, 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