

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

M.M., Appellant	)	
	)	
and	)	<b>Docket No. 19-1782</b>
	)	<b>Issued: April 2, 2020</b>
DEPARTMENT OF THE NAVY,	)	
PORTSMOUTH NAVAL SHIPYARD,	)	
Portsmouth, NH, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 22, 2019 appellant filed a timely appeal from a March 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 27, 2017 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 evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$13,688.05 for the period September 15, 2006 through January 5, 2019, for which he was without fault; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On July 13, 2004 appellant, then a 46-year-old marine machinery mechanic, filed a traumatic injury claim (Form CA-1) alleging that he tore his left knee quadratic tendon when he fell when climbing off a boat while in the performance of duty. OWCP accepted the claim for left quadriceps tendon rupture and repair. It paid appellant wage-loss compensation on the supplemental rolls as of August 17, 2004 and on the periodic rolls as of October 1, 2006.

In a January 3, 2019 letter, the Office of Personnel Management (OPM) notified OWCP that as a compensationner appellant was eligible to continue Federal Employee Life Insurance (FEGLI) coverage. It requested that OWCP deduct for code E4 basic Option C times 4 no reduction, and indicated that appellant's postretirement election was "no reduction." OPM related that the commencing date for the postretirement deduction was September 15, 2006. It forwarded a September 2, 2008 retirement operations center form which related that appellant's annuity commencing date was September 15, 2006 and that he carried basic life insurance, optional family life insurance (option Cat no reduction with 4 multiples), and postretirement basic life at no reduction.

In a letter addressed to appellant dated January 3, 2019, OPM related that, as long as OWCP found that he was unable to return to work and he continued to receive compensation benefits, his life insurance coverage would continue as follows: based on the base salary of \$40,633.89; deductions for basic life insurance and Option C (4 times, no reduction). It noted that his postretirement election was no reduction and the commencing date for postretirement deductions was September 15, 2006.

OWCP also received a FEGLI form entitled Continuation of Life Insurance Coverage as an annuitant or compensationner, which was signed by appellant on May 14, 2007. This form indicated that he selected basic life insurance, Option A standard optional life insurance, additional Option B with 50 multiples (\$50,000.00 maximum) with no reduction, and Option C family optional insurance with times 4 times, no reduction.

In a letter dated January 29, 2019, OWCP notified appellant that his compensation was being adjusted to reflect the correct life insurance deduction amounts reported by OPM, beginning February 2, 2019. Appellant was advised that he would receive a letter addressing the overpayment as the deductions were being made retroactively.

By letter dated February 13, 2019, OWCP notified appellant of his entitlement to compensation benefits effective January 6, 2019. The letter indicated that deductions were being made for basic life insurance in the amount of \$12.90, postretirement basic life insurance in the amount of \$84.54, and optional life insurance, in the amount of \$21.60.

By notice dated February 22, 2019, OWCP advised appellant of its preliminary determination that an overpayment of compensation occurred in the amount of \$13,688.05, for the period September 15, 2006 through January 5, 2019, because no deductions were made for postretirement basic life insurance. It found that he was without fault in the creation of the overpayment because OWCP erred in calculating the benefits, and that it was not shown that he had actual knowledge of the calculation error. OWCP advised appellant of his right to request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing, if he objected to the decision or requested waiver of the recovery of the overpayment. It further advised him to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. OWCP mailed the preliminary determination to appellant's address of record and afforded him 30 days to provide the requested information.

On March 19, 2019 OWCP received the first page of the overpayment action request form. Appellant requested a waiver of recovery of the overpayment, noted that he "did not know" that there was an overpayment, and indicated that he would suffer a financial hardship. No financial information or documentation accompanied his waiver request.

By decision dated March 27, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$13,688.05, for the period September 15, 2006 through January 5, 2019, because postretirement life insurance premiums were not properly deducted from his compensation payments for that period. It found that he was without fault in the creation of the overpayment; however, OWCP denied waiver of recovery because he did not respond to the overpayment recovery questionnaire and provide supporting financial documentation. OWCP directed appellant to repay the \$13,688.05 overpayment in full.

### **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>3</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>4</sup>

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the optional life insurance options.<sup>5</sup> The

---

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8129(a).

<sup>5</sup> *Id.* at § 8702(a).

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

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides 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. Regulations at 5 C.F.R. § 870.701 (December 5, 1980) provides 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>8</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>9</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP has not established that appellant received an overpayment of compensation in the amount of \$13,688.05 during the period September 15, 2006 through January 5, 2019.

The record reflects that OPM notified OWCP on January 3, 2019 that, as a compensation appellant was eligible to continue FEGLI coverage, it requested that OWCP deduct under code E4 basic Option C times 4 no reduction and postretirement election no reduction commencing September 15, 2006. OWCP calculated the amount of the underwithholding and resulting overpayment to be \$13,688.05, as it had not commenced deduction of premiums as of September 15, 2006. However, the record does not reflect appellant's life insurance election as of September 15, 2006. A FEGLI form he signed on May 14, 2007 selected basic life insurance, Option A standard life insurance, Option B additional life insurance x 50 (\$50,000.00 maximum) with no reduction, and Option C family optional life insurance times 4, with no reduction. This form is the only document of record bearing appellant's signature and it does not document his life insurance elections as of September 15, 2006. Furthermore, the elections appellant made on May 14, 2007 are not subsequently addressed on any OPM form or OWCP decision and differ from the elections shown on OPM letters and forms dated September 2, 2008 and January 3, 2019.

OPM acknowledged in its letter to appellant dated January 3, 2019 that conflicting information had been provided to OWCP regarding his life insurance elections. However, neither

---

<sup>6</sup> *Id.* at § 8702(b).

<sup>7</sup> *Id.* at § 8707.

<sup>8</sup> *See V.H.*, Docket No. 18-1124 (issued January 16, 2019).

<sup>9</sup> 5 U.S.C. § 8707(d). *See Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

it nor OWCP clarified the evidence of record prior to finalizing the overpayment determination. Appellant's life insurance election choice was therefore not established.<sup>10</sup>

Based upon the current record, the Board is therefore unable to verify fact and amount of the overpayment due to under deduction of FEGLI premiums during the period September 15, 2006 through January 5, 2019. The Board thus finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$13,688.05.<sup>11</sup>

**CONCLUSION**

The Board finds that OWCP has not established that appellant received an overpayment of compensation in the amount of \$13,688.05 for the period September 15, 2006 through January 5, 2019.

**ORDER**

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

Issued: April 2, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>10</sup> *Supra* note 8.

<sup>11</sup> In light of the Board's disposition of issue 1, the second issue regarding waiver of recovery of the overpayment is moot.