

FACTUAL HISTORY

On November 20, 2009 appellant, then a 55-year-old supervisory air traffic control specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained stress causally related to factors of his federal employment. OWCP accepted the claim for post-traumatic stress disorder and paid appellant wage-loss compensation for total disability on the supplemental rolls beginning August 18, 2010.

In a letter dated September 21, 2011, OWCP notified appellant that it was placing him on the periodic compensation rolls effective August 15, 2011. It advised that it was deducting basic life insurance (BLI) and optional life insurance (OLI) premiums from his compensation payments.

On February 14, 2019 the Office of Personnel Management (OPM) informed OWCP that appellant, as a compensationner, 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), BLI, and OLI with no reduction. OPM provided the FEGLI form completed by appellant on June 7, 2013 and his Option B and Option C election form freezing his OLI at no reduction at the age of 65. It indicated that the effective date of appellant's postretirement deductions was March 7, 2014 and that his final base salary was \$127,721.00.

In a worksheet dated April 8, 2019, OWCP specified the amounts that it should have deducted for PRBLI premiums from appellant's continuing compensation payments. It found that it should have deducted \$3,271.50 for the period March 7, 2014 to March 6, 2015, \$3,096.78 for the period March 7, 2015 to March 6, 2016, \$3,331.93 for the period March 9, 2016 to March 6, 2017, and \$6,627.34 for the period March 7, 2017 to March 7, 2019, for a total under deduction of PRBLI of \$16,327.55.

By notice dated April 15, 2019, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$16,327.55 because it had failed to deduct PRBLI premiums from his compensation payments for the period March 7, 2014 through March 2, 2019.² It further notified him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. 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 preresumption hearing, if he objected to the preliminary notification findings or requested waiver of recovery of the overpayment.

On April 24, 2019 appellant provided an overpayment action request form requesting a decision based on the written evidence. He submitted a completed overpayment recovery questionnaire advising that he had assets of \$29,156.07. Appellant further indicated that he had monthly income of \$10,863.18 and monthly expenses of \$11,164.00. He provided supporting financial documentation.

² OWCP noted that it had also not deducted premiums for OLI, but advised that it was only currently addressing the overpayment based on its failure to deduct premiums for PRBLI.

By decision dated May 16, 2019, OWCP finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$16,327.55 for the period Mach 7, 2013 through March 2, 2019. It found that he was without fault in the creation of the overpayment, but was not entitled to waiver of recovery of the overpayment as his assets exceeded the allotted resource base. OWCP further determined that appellant's monthly income exceeded his minimum monthly living expenses and that he had failed to fully document his monthly expenses.³ It advised that it would recovery the overpayment by deducting \$1,662.14 every 28 days from his continuing compensation payments.

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.⁴ 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.⁵

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.⁶ The coverage for basic life insurance is effective unless waived,⁷ and premiums for basic and optional life coverage are withheld from the employee's pay.⁸

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).⁹

³ OWCP used the minimum monthly payments on appellant's credit cards to determine his monthly expenses. It further accepted the remaining expenses listed, even those that he had failed to adequately document.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$16,327.55 for the period March 7, 2014 through March 2, 2019.

OPM notified OWCP that appellant had elected PRBLI coverage with no reduction effective March 7, 2014. OWCP, however, did not deduct premiums for PRBLI from appellant's wage-loss compensation from March 7, 2014 through March 2, 2019. It calculated the amount of the resulting overpayment as \$16,327.55 and provided a worksheet explaining its calculations.

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.¹¹

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 March 7, 2014 through March 2, 2019, appellant received an overpayment of compensation in the amount of \$16,327.55 during this period.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA¹³ 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 the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁴

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

¹⁰ 5 U.S.C. § 8707(d); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹¹ *Id.*

¹² *See D.H.*, *supra* note 10; *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

¹³ 5 U.S.C. § 8129(a)-(b); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹⁴ *G.L.*, Docket No. 19-0297 (issued October 23, 2019).

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.¹⁵

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 her position for the worse.¹⁶

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.¹⁷ Waiver is only possible if recovery would defeat the purpose of FECA or be against equity and good conscience.¹⁸ 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.¹⁹

The Board finds that OWCP properly determined that appellant's assets exceeded the limit established by OWCP procedures. In his April 24, 2019 overpayment recovery form, appellant indicated that he had assets of \$29,156.07, which exceeds the allowed resource base of \$10,300.00 for a claimant with a dependent as set forth in OWCP procedures.²⁰ OWCP further determined that, even if it accepted undocumented expenses, appellant's minimum monthly expenses totaled \$8,659.44 and his monthly income was \$10,979.45, a difference of \$2,320.01, which also exceeded the allowed resource base of \$50.00.²¹

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 relied upon the incorrect payments to his detriment or that he would experience severe financial hardship

¹⁵ 20 C.F.R. § 10.436. OWCP 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)(2) (September 2018).

¹⁶ 20 C.F.R. § 10.437(b)(1).

¹⁷ *D.H.*, *supra* note 10.

¹⁸ 20 C.F.R. § 10.436; *J.C.*, Docket No. 19-0122 (issued June 11, 2019).

¹⁹ *Supra* note 15.

²⁰ *Id.*

²¹ *G.L.*, *supra* note 14; Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.400.4(a)(3) (September 2018).

attempting to repay the debt.²² 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.²³ Section 10.441(a) of the regulation 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.”²⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$1,662.14 from appellant's continuing compensation payments, every 28 days.

The record reflects that appellant continues to receive wage-loss compensation from OWCP. In setting the rate of recovery, OWCP found that he could repay \$1,622.14 from his continuing compensation payments every 28 days.²⁵ As appellant's monthly income exceeded his ordinary and necessary living expenses by more than \$50.00, OWCP did not abuse its discretion in requiring repayment by deducting \$1,622.14 every 28 days from his continuing compensation payments.²⁶

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$16,327.55 for the period March 7, 2014 through March 2, 2019. The Board further finds that

²² *Supra* note 20; *see also G.L., supra* note 14.

²³ *C.A., supra* note 9; *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²⁴ 20 C.F.R. § 10.441(a).

²⁵ OWCP advised that it was deducting 25 percent from appellant's continuing compensation to repay the debt in accordance with its procedures. OWCP's procedures provide that, if it receives no response to the preliminary overpayment determination, and the overpaid individual is receiving compensation benefits on the periodic rolls, the rate of repayment should be set at 25 percent of the 28-day net compensation amount. Federal (FECA) Procedure Manual, *supra* note 15 at Chapter 6.400.3(a)(2) (September 2018). Appellant responded to the preliminary overpayment determination. However, OWCP properly set the rate of recovery as his assets and monthly income demonstrated that repaying \$1,662.14 from continuing compensation would minimize hardship. *See generally E.B.*, Docket No. 19-1443 (issued December 12, 2019).

²⁶ *See G.L., supra* note 14.

OWCP properly denied waiver of recovery of the overpayment and properly determined that it would recover the overpayment by deducting \$1,662.14 from his continuing compensation payments, every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2020
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