

and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On February 26, 1996 appellant, then a 47-year-old senior Equal Employment Opportunity (EEO) complaint processing specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition while in the performance of duty. OWCP accepted her claim for acute post-traumatic stress disorder and anxiety disorder. Appellant stopped work on January 26, 1996 and did not return. OWCP paid wage-loss compensation benefits on the periodic compensation rolls as of January 27, 1997.

In a June 7, 2016 letter to OWCP, the Office of Personnel Management (OPM) advised that, as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of Postretirement Basic Life Insurance (PRBLI) and Optional Life Insurance (OLI). It noted that the final base salary on which FEGLI is based was \$57,136.00 and the commencing date for the PRBLI deduction was April 11, 1997. OPM advised OWCP to "CONTINUE THE OPTION B AND OPTION C PREMIUMS." (Emphasis in the original.) It noted that basic and optional coverage premiums began on OWCP's commencing date.

In a letter dated December 14, 2016, appellant requested a breakdown of her deductions, by category. OWCP provided a copy of a benefit statement advising her that deductions in the amount of \$309.61 were being withheld from her gross compensation every 28 days.

In a letter dated January 18, 2017, OWCP advised that appellant's deductions were: \$136.96 for health insurance; \$117.97 for PRBLI; \$42.00 for dental insurance; and \$12.68 for vision insurance.³ It related that the deductions totaled \$309.61.

In a July 19, 2017 memorandum of telephone call (Form CA-110), appellant contacted OWCP regarding her postretirement life insurance. OWCP's claims examiner explained that they were deducting PRBLI premiums; however, the other deductions stopped at age 65. He advised appellant to contact OPM for specific coverage amounts.

In a September 22, 2017 memorandum of telephone call (Form CA-110), appellant indicated that she was inquiring about her life insurance because deductions were being made for PRBLI, but not OLI. OWCP's claims examiner advised her to contact OPM if she believed that this was incorrect, as OWCP could not change her coverage.

In a letter dated September 23, 2017, appellant advised OWCP that she presently had PRBLI no reduction; however, she had always elected OLI, with no reduction, since being employed at the employing establishment and she believed that an error had occurred. She provided a copy of a June 7, 2016 letter from OPM to OWCP, which related that she carried life insurance under option C. Appellant also provided a copy of a second letter from OPM, also dated

³ OWCP noted that the deductions for dental and vision benefits were lumped into a miscellaneous deduction of \$54.68.

June 7, 2016. In that letter, OPM explained that as long as OWCP found that she was unable to return to work, and she continued to receive compensation benefits, her life insurance coverage would continue. It also advised appellant that OWCP made a computer error in January 2016, which caused her OLI premiums to stop. OPM advised her that OWCP was working on correcting the error and that she would be billed for the past due premiums.

On October 5, 2017 upon review of the fiscal record, OWCP determined that appellant had elected both PRBLI and OLI. It explained that premiums were deducted through January 9, 2016, but for some reason OLI premiums were dropped beginning January 10, 2016. Appellant was therefore overpaid for the period January 10, 2016 through September 16, 2017. OWCP explained that an overpayment was calculated as $\$319.48 \times 22$ pay roll cycles or $\$7,028.56$. A worksheet of the payments was attached.

In a November 2, 2017 memorandum of telephone call (CA-110), OWCP's claims examiner advised appellant that both basic and optional life insurance premiums were again being deducted from her compensation. OWCP provided her with a letter also dated November 2, 2017 advising her that her life insurance premiums were restored. Appellant was informed that this action was taken pursuant to an OPM memorandum dated June 7, 2016 which reflected that her postretirement election was no reduction, commencing April 11, 1997, and that she continued coverage of basic life insurance, no reduction; option B-5x- no reduction, and option C-1x-no reduction.

On November 14, 2017 OWCP issued appellant a preliminary determination of an overpayment of compensation in the amount of $\$7,028.56$ because it had failed to make proper insurance deductions from her continuing benefits for the period January 10, 2016 through September 16, 2017. It noted that she did not have the proper OLI premiums deducted. OWCP explained that appellant had elected the PRBLI coverage and OLI coverage at the no reduction levels. It noted that, while the premiums were deducted through January 9, 2016, the OLI premiums were inexplicably dropped beginning on January 10, 2016. They were not restored again until the periodic rolls payment beginning on September 17, 2017. OWCP explained that the OLI premium deduction for no reduction was $\$319.48$. It explained that it should have been deducted for 22 cycles, and as such, the total deductions of $\$7,028.56$ should have been made and an overpayment in that amount had occurred. OWCP made a preliminary determination that appellant was not at fault in the creation of the overpayment. It advised her that she could submit evidence challenging the fact, amount, and request waiver of recovery of the overpayment. OWCP informed appellant that she could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of the overpayment. It also requested that she complete the enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days.

On November 26, 2017 appellant completed the overpayment recovery questionnaire (Form OWCP-20). She argued that she did not believe that an overpayment occurred. Appellant indicated that the overpayment was based on an insurance policy that was not in effect during the period January 10, 2016 to September 16, 2017. She provided a breakdown of her monthly income and expenses. Appellant indicated that she had total monthly expenses of $\$2,956.00$. The record reflects that she received $\$3,976.71$ from OWCP every 28 days and she also indicated that she received $\$560.00$ in social security benefits monthly, thus, she had a total monthly income of

\$4,536.71. Appellant also indicated that she had \$500.00 in her checking account and \$3,000.00 in her savings account. She indicated that her bills and monthly expenses totaled \$2,956.00. This included: rent \$1,156.00; food \$350; clothing \$200.00; and utilities \$150.00. Appellant also listed credit card debts in the amount of \$3,600.00, for which she paid \$125.00/\$300.00 per month and a \$41,000.00 bank note with a monthly payment of \$125.00/\$300.00.

By decision dated February 14, 2018, OWCP finalized the overpayment of compensation in the amount of \$7,028.56. It found that, although appellant was not at fault in the creation of the overpayment, the overpayment was not subject to waiver as her calculated expendable income did not indicate that recovery of the debt would cause undue hardship, defeat the purpose of FECA, or be against equity and good conscience. OWCP found that \$250.00 would be deducted from her continuing wage-loss benefits beginning March 4, 2018, every 28 days until the overpayment was absorbed.

LEGAL PRECEDENT -- ISSUE 1

Section 8129(a) of 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.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

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 the OPM upon discovery of the error.⁶

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.⁷ The coverage for basic life insurance is effective unless waived,⁸ and premiums for basic life insurance and optional life insurance coverage are withheld from the employee's pay.⁹ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹⁰ The employee is responsible for payment of premiums for optional life

⁴ 5 U.S.C. § 8129.

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

⁶ 5 U.S.C. § 8707(d); *B.W.*, Docket No. 19-0126 (issued December 9, 2019); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁷ 5 U.S.C. § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

insurance coverage which is accomplished by authorizing withholdings from his or her compensation.¹¹

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).¹²

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.¹³ An 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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP found that an overpayment of compensation in the amount of \$7,028.56 was created for the period January 10, 2016 through September 16, 2017 because it failed to properly deduct premiums for optional life insurance, with no reduction. Appellant alleged that she had always elected OLI, with no reduction. On October 5, 2017 OWCP reviewed the fiscal record and determined that appellant had elected both PRBLI and OLI. It explained that premiums had been properly deducted through January 9, 2016, but due to an error were dropped beginning January 10, 2016. The record includes OPM's June 7, 2016 letter notifying OWCP that appellant had elected both PRBLI and OLI. The record also includes computer printouts showing that no deductions had been made for OLI for 22 compensation periods beginning January 10, 2016 to

¹¹ *Id.* at § 8706(b)(3)(B). *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *see Edward J. Shea*, 43 ECAB 1022 (1992).

¹² *G.L.*, Docket No. 19-0297 (issued October 23, 2019); *see James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹³ 5 C.F.R. § 870.504(a)(1).

¹⁴ *Id.* at § 870.504(b).

¹⁵ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

September 16, 2017. A November 2, 2017 payment report indicated that the OLI premium deduction was reinstated effective September 17, 2017.

The Board finds that OWCP failed to adequately support its determination that appellant received an overpayment of compensation for the period because it failed to properly deduct premiums for OLI. While the record contained memorandum from OPM regarding appellant's OLI coverage, the record does not contain evidence that appellant signed a document electing OLI coverage with no reduction. The record does not contain a signed election form showing which coverage she actually selected or if she 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.¹⁶ As OWCP has not factually established appellant's life insurance election, which was in effect on January 10, 2016, it has not met its burden of proof to establish that she received an overpayment of compensation from January 10, 2016 through September 16, 2017.

As the fact and amount of overpayment are not clearly established by the record, the case will be remanded to OWCP. On remand OWCP should obtain an executed election form from OPM completed by appellant prior to determining whether she received an overpayment of compensation due to its failure to deduct life insurance premiums. After such further development as OWCP deems necessary, it should issue a *de novo* decision.¹⁷

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁶ *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).

¹⁷ In light of the Board's disposition of the overpayment, the issue of whether OWCP properly denied waiver of recovery of the overpayment and the recovery amount are moot.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 5, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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