



overpayment by deducting \$250.00 from appellant's continuing compensation benefits, every 28 days.

### **FACTUAL HISTORY**

In July 2006, OWCP accepted that appellant, then a 37-year-old clerk, sustained a depressive disorder and generalized anxiety disorder due to various incidents and conditions at work. Appellant stopped work on November 2, 2009 and received wage-loss compensation benefits for disability from work on the daily rolls commencing that date and on the periodic rolls commencing January 17, 2010.

On December 19, 2013 the Office of Personnel Management (OPM) advised OWCP that appellant was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that appellant had elected postretirement basic life insurance (PRBLI) coverage (with no reduction), basic life insurance (BLI) coverage, and optional life insurance (OLI) coverage (Option A, B, and C with no reduction) effective February 15, 2013. OPM noted that the deductions for BLI and OLI should be made based on appellant's annual salary of \$53,102.00.<sup>3</sup>

By notice dated January 18, 2019, OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$8,282.47 because PRBLI, BLI, and OLI premiums had not been properly deducted from her compensation payments for the period February 15, 2013 to November 10, 2018. It summarized its calculation of the overpayment and advised appellant that she was without fault in its creation. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents within 30 days of the date of the letter. Additionally, it notified her that within 30 days of the date of the letter she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

OWCP provided compensation payment records for the period February 15, 2013 to November 10, 2018, as well as overpayment worksheets explaining the \$8,282.47 overpayment. It provided calculations showing shortfalls in deductions for the periods February 15 to November 16, 2013 (\$1,157.78), November 17, 2013 to January 9, 2016 (\$3,009.88), and January 10, 2016 to November 10, 2018 (\$4,114.81). The worksheets show that these shortages for the period February 15, 2013 to November 10, 2018 occurred because no deductions were made for PRBLI and improper deductions were made for BLI and OLI due to use of an incorrect figure for appellant's adjusted annual salary of \$52,526.00, instead of the proper figure of \$53,102.00. The total of these deduction shortages is \$8,282.47.

On January 30, 2019 appellant requested a prerecoupment hearing with a representative of OWCP's Branch of Hearings and Review. She did not challenge the fact or amount of the \$8,282.47 overpayment, but she requested waiver of recovery of the overpayment. Appellant submitted a Form OWCP-20, completed on January 30, 2019, noting that she had \$7,451.00 in

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<sup>3</sup> In a December 6, 2018 letter, OWCP advised appellant that proper deductions for PRBLI, BLI, and OLI premiums would be made for the period of her next wage-loss compensation payment, *i.e.*, the period commencing November 11, 2018.

monthly income. She also listed monthly expenses of \$4,319.03 and assets of \$201.00 (checking/saving account balances).<sup>4</sup>

During the telephonic hearing, held on June 4, 2019, appellant testified that her monthly income of \$7,451.00 was comprised of her husband's salary and her FECA compensation benefits. She discussed her monthly expenses for rent, mortgage, property tax, food, clothing, utilities, insurance (home, life, and car), child support, and miscellaneous items (car fuel, internet/television, and cleaning/hygiene).<sup>5</sup> Appellant also provided testimony regarding her minimum monthly payments of debts for two cars, bank loans, and bills from several retailers.<sup>6</sup> After the hearing, she submitted documentation relating to some of her claimed monthly expenses.

By decision dated July 23, 2019, OWCP's hearing representative finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$8,282.47, for which she was without fault. She determined that appellant did not qualify for waiver of recovery of the overpayment as her monthly income exceeded her monthly expenses by more than \$50.00. The hearing representative found that she had monthly income of \$7,451.00. She also determined that appellant had monthly expenses of \$6,276.66 comprised of \$4,507.06 for rent, mortgage, property tax, food, clothing, utilities, insurance, child support, and miscellaneous items and \$1,769.60 for monthly minimum payments related to debts for two cars, bank loans, and bills from several retailers.

The hearing representative explained that appellant's monthly payments for trailer-related expenses, time share payments, car wash membership, gun shield law insurance, and Netflix fees would not be included in her monthly expenses because they were not considered to be ordinary and necessary living expenses under FECA.<sup>7</sup> She indicated that appellant referenced a loan in the amount of \$25,753.07 and a credit card balance of \$19,079.43, but that she had not explained the reasons for these debts or identified minimum monthly payments for them. The hearing representative discussed appellant's disposable monthly income and directed recovery of the overpayment by deducting \$250.00 every 28 days from her continuing compensation payments.

### **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 options.<sup>8</sup> The coverage for BLI is effective unless

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<sup>4</sup> Appellant submitted documents relating to some of her monthly expenses. She also submitted a federal tax form for 2017 (Form 1040) listing salaries/wages of \$78,080.00.

<sup>5</sup> The total amount of these claimed monthly expenses was \$4,507.06. Appellant also provided monthly figures for trailer-related expenses, time share payments, car wash membership, gun shield law insurance, and Netflix fees.

<sup>6</sup> Appellant also referenced a loan in the amount of \$25,753.07 and a Visa balance of \$19,079.43.

<sup>7</sup> The hearing representative indicated that appellant claimed that she had a \$160.00 monthly minimum payment for Costco purchases, but that she did not provide documentation for this claimed monthly expense and therefore it would not be included in the total.

<sup>8</sup> 5 U.S.C. § 8702(a).

waived,<sup>9</sup> and premiums for BLI and OLI coverage are withheld from the employee's pay.<sup>10</sup> 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.<sup>11</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>12</sup> however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.<sup>13</sup>

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).<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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<sup>9</sup> *Id.* at § 8702(b).

<sup>10</sup> *Id.* at § 8707.

<sup>11</sup> *Id.* at § 8706.

<sup>12</sup> *Id.* at § 8707(b)(2).

<sup>13</sup> *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

<sup>14</sup> *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>15</sup> 5 C.F.R. § 870.504(a)(1).

<sup>16</sup> *Id.* at § 870.504(b).

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

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.<sup>18</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>19</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,282.47 for which she was without fault.

OPM notified OWCP that appellant had elected PRBLI, BLI, and OLI coverage effective February 15, 2013. OWCP, however, did not deduct the proper amounts of premiums for PRBLI, BLI, and OLI from appellant's wage-loss compensation benefits for the period February 15, 2013 to November 10, 2018. It calculated the amount of the resulting overpayment as \$8,282.47. The record contains compensation payment records, as well as overpayment worksheets explaining the overpayment calculation and how the overpayment occurred. 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.<sup>20</sup>

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, BLI, and OLI premiums for the period February 15, 2013 to November 10, 2018, appellant received an overpayment of compensation of \$8,282.47 during this period.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP 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."<sup>21</sup> Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>22</sup>

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<sup>18</sup> 5 U.S.C. § 8102(a).

<sup>19</sup> *Id.* at § 8129(a).

<sup>20</sup> *See id.* at 8102.

<sup>21</sup> *Id.* at § 8129.

<sup>22</sup> 20 C.F.R. § 10.438.

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.<sup>23</sup>

Section 10.436 provides that 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 current income (including compensation benefits) to meet current ordinary and necessary living 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.<sup>24</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>25</sup>

OWCP procedures provide that the 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.<sup>26</sup> An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.<sup>27</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>28</sup>

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. Appellant's monthly income of \$7,451.00 exceeds her monthly ordinary and necessary expenses of \$6,276.66 by \$1,174.34. The Board notes that OWCP's hearing representative properly excluded claimed monthly expenses which did not constitute ordinary and

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<sup>23</sup> *Id.* at §§ 10.434-10.437.

<sup>24</sup> *Id.* at § 10.436.

<sup>25</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

<sup>26</sup> *Id.* at Chapter 6.400.4a(2).

<sup>27</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

<sup>28</sup> *See supra* note 22.

necessary living expenses or which were not adequately documented.<sup>29</sup> As appellant's current income exceeds her current ordinary and necessary living expenses by more than \$50.00, appellant has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.<sup>30</sup> Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test, *i.e.*, whether appellant's assets do not exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.<sup>31</sup>

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$8,282.47 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.<sup>32</sup> Section 10.441(a) of the regulations<sup>33</sup> 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.”<sup>34</sup>

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<sup>29</sup> See *supra* note 26 at Chapter 6.400.4b(2). The hearing representative indicated that appellant referenced a loan in the amount of \$25,753.07 and a credit card balance of \$19,079.43, but she did not explain the reasons for these debts or identify minimum monthly payments for them. She also noted that appellant claimed a \$160.00 monthly minimum payment for Costco but that she did not document this expense.

<sup>30</sup> See *supra* note 26.

<sup>31</sup> See *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

<sup>32</sup> *C.A.*, *supra* note 15; *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

<sup>33</sup> 20 C.F.R. § 10.441(a).

<sup>34</sup> *Id.*

**ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation benefits, every 28 days.

The record supports that, in requiring repayment of the overpayment by deducting \$250.00 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by appellant as well as the factors set forth in section 10.441 and found that this method of recovery would minimize resulting hardship on appellant. Therefore, OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's compensation payments, every 28 days.

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,282.47 for the period February 15, 2013 to November 10, 2018 for which she was without fault. The Board further finds that OWCP properly denied waiver of recovery of the overpayment, and properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation benefits, every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2020  
Washington, DC

Christopher J. Godfrey, Deputy 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