

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

D.P., Appellant)	
)	
and)	Docket No. 20-0546
)	Issued: November 19, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Flushing, NY, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a January 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,214.84 because OWCP had failed to deduct postretirement basic life insurance (PRBLI) premiums from her wage-loss compensation for the period June 22, 2018 through October 12, 2019; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 23, 1997 appellant, then a 39-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her low back on that date when lifting a bag while in the performance of duty. She stopped work on June 24, 1997. OWCP accepted the claim for lumbar sprain. It subsequently expanded acceptance of the claim to include a herniated lumbar disc and an aggravation of degeneration of lumbar disc disease. Appellant returned to limited-duty work on August 9, 1997, but sustained recurrences of disability in August and September 1997. She stopped work on September 14, 1997 and did not return.³ OWCP paid appellant wage-loss compensation on the periodic rolls.

OWCP, on November 27, 2007, referred appellant to vocational rehabilitation. By decision dated December 16, 2008, it reduced her wage-loss compensation effective October 30, 2008 as she had the capacity to perform the constructed position of data entry clerk. By decision dated August 14, 2009, an OWCP hearing representative affirmed the December 16, 2008 wage-loss capacity determination.⁴

Appellant appealed to the Board. By decision dated May 21, 2010, the Board reversed OWCP's August 14, 2009 decision.⁵ The Board found that the medical evidence failed to establish that the position of data entry clerk was within appellant's physical limitations.

Subsequently, appellant accepted a position as a modified passport call center assistant with the employing establishment on July 25, 2017. OWCP later accepted that she had sustained a recurrence of disability in June 2018. It paid appellant using a date-of-recurrence pay rate of June 19, 2018 at a weekly pay rate of \$1,130.23 or a yearly salary of \$58,772.00. Earnings statements from 2018 indicated that she received gross pay of \$2,311.23 per pay period at a yearly salary of \$60,092.00.

On October 30, 2019 the Office of Personnel Management (OPM) informed OWCP that appellant, as a compensationier, was eligible to continued life insurance coverage under the Federal Group Life Insurance (FGLI) program. It notified OWCP that she had elected PRBLI with no reduction. OPM indicated that the effective date of appellant's postretirement deductions was

² Docket No. 09-2286 (issued May 21, 2010).

³ By decision dated May 1, 2002, OWCP terminated appellant's wage-loss compensation effective May 1, 2002 based on its finding that the weight of the evidence, as represented by the impartial medical examiner, established that her work-related disability had ceased. On November 25, 2002 an OWCP hearing representative vacated the May 1, 2002 decision after finding that there was insufficient evidence that the impartial medical examiner was properly selected.

⁴ By decision dated August 18, 2010, OWCP denied appellant's claim for augmented compensation. By decision dated February 2, 2011, OWCP's hearing representative affirmed the August 18, 2010 decision.

⁵ *Supra* note 2.

June 22, 2018 and that her final base salary was \$60,148.00. It enclosed a FEGLI continuation of life insurance coverage form signed by appellant on September 26, 2019 electing PRBLI with no reduction.

On November 5, 2019 OWCP notified appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$2,124.84 because it had failed to deduct PRBLI premiums from her wage-loss compensation for the period June 22, 2018 through October 12, 2019. It advised that it should have deducted premiums for PRBLI of \$853.80 from June 22 through December 31, 2018 and \$1,260.80 from January 1 through October 12, 2019. OWCP found that it should use a base salary of \$60,148.00 rather than \$58,772.00. To correct the discrepancy, it adjusted the salary by adding \$10.24 to find a total overpayment of \$2,124.84. OWCP further informed appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete the enclosed overpayment recovery questionnaire and submit supporting financial documents. Additionally, OWCP notified appellant that, within 30 days of the date of the letter, she could request a telephonic conference, a final decision based on the written evidence, or a prerecoupment hearing.

By decision dated January 8, 2020, OWCP finalized its preliminary determination that appellant had received an overpayment of wage-loss compensation in the amount of \$2,212.84 for the period June 22, 2018 through October 12, 2019. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, noting that she had not responded to the preliminary overpayment determination. OWCP found that it would recover the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

FECA⁶ 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.⁷ 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.⁸

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.⁹ The coverage for basic life insurance is effective unless waived,¹⁰ and premiums for basic and optional life coverage are withheld from the employee's pay.¹¹ Upon retirement or upon separation from the employing

⁶ *Supra* note 1.

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8129(a).

⁹ *Id.* at § 8702(a).

¹⁰ *Id.* at § 8702(b).

¹¹ *Id.* at § 8707.

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.¹² Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹³ however, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.¹⁴

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).¹⁵

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.¹⁶ 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.¹⁷

OWCP's procedures, regarding PRBLI, provide:

“PRBLI prevents a life insurance benefit reduction at age 65. The default reduction is a reduction of 75 [percent], but the claimant can elect either ‘No Reduction’ or ‘50 [percent] Reduction.’ Claimants must elect this coverage when separated or retired from Federal employment. The coverage is effective immediately, and the

¹² *Id.* at § 8706.

¹³ *Id.* at § 8707(b)(2).

¹⁴ *Id.* at § 8706(b)(3)(B). See *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that the claimant received an overpayment of compensation where he elected PRBLI with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). See also *Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for the periods July 1983 through November 1989).

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

¹⁶ 5 C.F.R. § 870.504(a)(1).

¹⁷ *Id.* at § 504(b).

premiums continue until death. Prior to age 65, the claimant must pay for both BLI and PRBLI if it has been elected.”¹⁸

When an under withholding 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.¹⁹

ANALYSIS -- ISSUE 1

The Board finds OWCP improperly determined that the overpayment of compensation in the amount of \$2,214.84 because OWCP had failed to deduct PRBLI premiums from appellant’s wage-loss compensation for the period June 22, 2018 through October 12, 2019.

On October 30, 2019 OPM notified OWCP that appellant had elected PRBLI at no reduction. It enclosed an election form signed by her on September 26, 2019. Based on this information, OWCP found that appellant had received an overpayment of compensation as it failed to deduct premiums for PRBLI from June 22, 2018 through October 12, 2019.

While in compensation status, appellant is responsible for all insurance premiums, including for PRBLI at whatever option selected.²⁰ The Board finds, however, that OWCP failed to adequately support its determination that she received an overpayment of compensation from June 22, 2018 through October 12, 2019. OPM failed to provide documentation establishing the date that appellant had elected PRBLI at no reduction. It enclosed an election form signed by her on September 26, 2019 electing PRBLI with no reduction. The form does not specify the date of the effective election. The date that appellant signed the election form, September 26, 2019, is after June 22, 2018, the starting date of the overpayment found by OWCP in this case and date that OPM indicated that she had elected coverage.

The Board has held that OWCP must document when a claimant elected life insurance coverage after separation from federal service or retirement in order to establish the fact of overpayment of compensation.²¹ In *N.J.*,²² the Board remanded the case to OWCP for further development because the evidence was unclear why PRBLI premiums had been deducted as of a certain date. As OWCP has not factually established that appellant elected PRBLI beginning June 22, 2018, it has not met its burden of proof to establish that she received an overpayment of

¹⁸ Federal (FECA) Procedure Manual, Part 2, Claims, *Compensation Claims*, Chapter 2.901.15(c)(3) (February 2013).

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

²⁰ *J.L.*, Docket No. 14-1094 (issued June 25, 2015).

²¹ See generally *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019).

²² Docket No. 13-2164 (issued April 18, 2014).

compensation from June 22 through October 12, 2019 due to its failure to deduct premiums for PRBLI.²³

CONCLUSION

The Board finds OWCP improperly determined that the overpayment of compensation in the amount of \$2,214.84 because OWCP had failed to deduct PRBLI premiums from appellant's wage-loss compensation for the period June 22, 2018 through October 12, 2019.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 19, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²³ *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, *supra* note 21.