

ISSUES

The issues are: (1) whether OWCP properly determined that the employee received an overpayment of compensation, for which he was not at fault, in the amount of \$24,634.57 during the period May 4, 1991 through October 6, 2017 because life insurance premiums were not deducted from his FECA compensation; and (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment.

FACTUAL HISTORY

On March 8, 1990 the employee, then a 39-year-old general operator of heavy equipment, filed an occupational disease claim (Form CA-2) alleging that he sustained a herniated nucleus pulposus (HNP) due to years of lifting and carrying heavy objects and long hours of vibrating and jarring while driving and operating heavy equipment in the performance of duty. Appellant stopped work on April 27, 1990. OWCP accepted the claim for aggravation of displacement of lumbar intervertebral disc without myelopathy. Acceptance of the claim was subsequently expanded to include the conditions of post laminectomy syndrome, lumbar region; mechanical complication of nervous system device, implant, and graft. OWCP placed the employee on the periodic rolls.

On October 10, 2017 appellant called OWCP and notified them that the employee died on October 6, 2017.

In an October 25, 2017 letter to the Office of Personal Management (OPM), OWCP advised that the employee had elected to receive OPM retirement benefits in lieu of FECA benefits effective September 20, 2017. It also noted that the date of the last Basic Life Insurance (BLI) deduction was May 15, 2015, the employee's 65th birthday and that the date of the last Optional Life Insurance (OLI) deduction was October 6, 2017.

On November 7, 2017 OPM notified OWCP that there was a discrepancy regarding the information provided by OPM in its April 18, 1991 letter regarding the employee's life insurance coverage. In its April 18, 1991 letter, OPM advised that the employee had BLI (no reduction) coverage, as well as standard optional and family optional life insurance, based upon a final pay rate of \$33,099.00 per annum. It also noted that the employee's FECA compensation could start on May 1, 1991. A copy of the employee's election of BLI and optional benefits was not included.

In December 13, 2017 correspondence, OWCP indicated that OPM had advised that the employee elected no reduction of his Post Retirement Basic Life Insurance (PRBLI) effective May 1, 1991, the compensation start date. It advised that there was an overpayment for underdeducted PRBLI premiums from the employee's estate.

In a March 20, 2018 memorandum, OWCP indicated that the employee's compensation history confirmed that he received continuous OWCP compensation benefits from May 1, 1991 (the date of his PRBLI coverage with no reduction election) through October 6, 2017 (the date of his death) and that no deductions for PRBLI were taken from his OWCP compensation. A compensation payment history form dated December 13, 2017 indicated that no premiums for PRBLI were deducted for the period May 1, 1991 through October 6, 2017.

On May 18, 2018 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$24,634.57 because PRBLI premiums had not been deducted from the employee's FECA compensation for the period May 4, 1991 through October 6, 2017. It explained how the overpayment was calculated. OWCP also found he was without fault in the creation of the overpayment because he was not aware, nor could he reasonably have been expected to know, that it had paid compensation incorrectly. It forwarded an overpayment action request and an overpayment recovery questionnaire (Form OWCP-20) and allotted appellant 30 days to respond.

On June 14, 2018 appellant requested a prerecoupment hearing before an OWCP hearing representative. She disagreed with the fact and amount of the overpayment and requested waiver as the overpayment occurred through no fault of the employee. In a June 12, 2018 statement, appellant further explained why she disagreed that an overpayment had occurred and that she disagreed with the amount.

Appellant also submitted a signed overpayment recovery questionnaire dated June 14, 2018 and supporting financial documentation. She indicated that she had one dependent (her mother). Appellant reported total monthly income of \$6,729.29 and total expenses of \$7,276.27. She noted one installment debt which then totaled \$500.00 was paid at \$50.00 per month. Appellant noted that she owned valuable property and real estate other than her home, family automobile, and furnishings which included another house with equity income of almost \$7,000.00 and 40 acres of undeveloped pasture worth \$19,680.00. She also indicated that she had funds totaling \$208,300.94.

A telephonic prerecoupment hearing was held on December 14, 2018. The hearing representative requested that appellant provide updated supporting financial documentation of the information provided on the Form OWCP-20. No updated financial information was submitted.⁴

By decision dated February 8, 2019, an OWCP hearing representative finalized the preliminary determination of May 18, 2018. The hearing representative found the evidence of record was sufficient to establish that an overpayment of compensation in the amount of \$24,634.57 had been created for the period May 4, 1991 through October 6, 2017 as the employee had elected PRBLI at no reduction effective May 1, 1991 without an appropriate offset. The hearing representative further found that the employee was without fault in the creation of the overpayment. Recovery of the overpayment was due and payable 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.⁵ When an overpayment has been made to an individual because of an error of fact or law,

⁴ The Board notes that on February 1, 2019 OWCP received additional evidence, but evidence beyond the first two pages of the submission is not of record.

⁵ 5 U.S.C. § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁷ The coverage for BLI is effective unless waived⁸ and premiums for basic and optional life 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 OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his annuity or compensation payments.¹⁰

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. Regulations at 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).¹¹

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 remained in effect.¹² An employee who does not file a life insurance election form 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.¹³

⁶ *Id.* at § 8129(a).

⁷ 5 U.S.C. § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

¹¹ See *D.H.*, Docket No. 19-0384 (issued August 12, 2019); see *V.H.*, Docket No. 18-1124 (issued January 16, 2019). See *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

¹² 5 C.F.R. § 870.504(a)(1).

¹³ *Id.* at § 870.504(b).

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.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that the employee received an overpayment of compensation.

OWCP's preliminary determination notified appellant that the employee had received an overpayment of compensation in the amount of \$24,634.57. However, the record does not establish that appellant was a federal employee nor was she a beneficiary of FECA compensation which is the basis of the claimed overpayment.¹⁵ For that reason, OWCP was required to follow certain procedures to protect her, as a nonbeneficiary, and that protection is required in overpayment cases wherein it has knowledge that a beneficiary with an existing overpayment has died.¹⁶ Its procedures for recovery from a deceased debtor's estate, in effect at the time of OWCP's February 8, 2019 decision, specifically provide instructions that:

“If it appears that the claimant's surviving spouse will be entitled to compensation for death benefits under 5 U.S.C. § 8133(b) from which the remaining overpayment balance can be collected under 5 U.S.C. § 8129 within a reasonable time, or similarly, that the claimant's surviving spouse has clear entitlement to OPM retirement benefits subject to offset and where it appears clear the remaining overpayment balance can be feasibly collected from these sources, the CE may seek the permission of the District Director to omit the estate collection process described below. Such permission should be documented with a memorandum to the file and a letter to the claimant's surviving spouse should describe the collection process contemplated.”¹⁷

Otherwise, if the claimant recently passed away, OWCP should refer the debt to the financial management system (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP).¹⁸ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The CE should follow the referral procedures set forth in PM Chapter 6.500.15, including sending the complete referral package to the National Office for final review and forwarding to the FMS.¹⁹

¹⁴ 5 U.S.C. § 8707(d); *see also D.H., supra* note 11; *S.P., supra* note 11; *Keith H. Mapes*, 56 ECAB 130 (2004).

¹⁵ 20 C.F.R. §10.5 defines a “beneficiary” of FECA compensation as an individual who is entitled to a benefit under FECA.

¹⁶ *See R.R.*, Docket No. 18-0803 (issued April 25, 2019).

¹⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15(e) (September 2018).

¹⁸ 31 C.F.R. § 285.2.

¹⁹ *Supra* note 18.

At the time of OWCP's February 8, 2019 decision, its procedures for recovery from a deceased employee's estate also set forth the steps OWCP must take in making a claim against the estate, which were not followed here.²⁰ The record does not establish that OWCP followed the necessary steps for debt collection in this matter.

OWCP found an overpayment in the amount of \$24,634.57 because it failed to deduct PRBLI premiums from the employee's wage-loss compensation for the period May 4, 1991 through October 6, 2017. It reviewed the fiscal record and determined that the employee had elected no reduction of his PRBLI effective May 1, 1991, the compensation start date, and that the December 13, 2017 compensation payment history form confirmed that no premiums for PRBLI were deducted for the period May 1, 1991 through October 6, 2017. The record includes OPM's April 18, 1991 letter notifying OWCP that the employee had elected no reduction of PRBLI on January 24, 1991.

The Board finds, however, that OWCP failed to adequately support its determination that the employee received a \$24,634.57 overpayment due to its failure to properly deduct premiums for PRBLI. While the record includes communications from OPM regarding the employee's PRBLI coverage, the record does not contain evidence that the employee affirmatively signed a document electing any offered life insurance 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 in order to establish the fact of overpayment of compensation.²¹ As OWCP has not factually established the employee's election of PRBLI on the relevant dates, it has not met its burden of proof to establish that a \$24,634.57 overpayment was created between May 1, 1991 and October 5, 2017, as alleged, regarding the under deductions of PRBLI premiums.²²

The Board therefore finds that OWCP has not met its burden of proof to establish that an overpayment of compensation occurred as alleged.

CONCLUSION

The Board finds that OWCP improperly determined that the employee received an overpayment of compensation.²³

²⁰ *Id.* at Chapter 6.500.15(g)(1)-(7).

²¹ *J.P., widow of J.P.*, Docket No. 18-1194 (issued April 28, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

²² *Id.*

²³ In light of the Board's disposition of issue 1, issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 8, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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