

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$75,741.38 for the period September 1, 1992 through July 20, 2019, for which she was not at fault, because OWCP did not make proper deductions for life insurance premiums; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$600.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 13, 1984 appellant, then a 41-year-old program assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 1984 she sustained injury when she fell while descending a flight of stairs while in the performance of duty. OWCP initially accepted the claim for neck sprain, right foot sprain, and contusions of the face, neck, and scalp. The acceptance of the claim was later expanded to include the additional conditions of acute reaction to stress, mood disorder, syncope and collapse, and other convulsions. Appellant stopped work in March 1986 and did not return. OWCP placed her on the periodic rolls for wage-loss compensation beginning February 10, 1991.

In a daily adjustment log for general compensation dated January 12, 1999, appellant's optional life insurance (OLI) code was listed as class W under OLI code 976 and a premium deduction of \$66.00 was noted. No premium deduction was noted for basic life insurance coverage.

In a letter dated May 7, 2018, the Office of Personnel Management (OPM) notified OWCP that appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage. It requested that OWCP deduct for code W0 Basic with no reduction and Option B times 5 with no reduction. OPM noted that the commencing date for the postretirement deduction was August 31, 1992. It noted that appellant had elected to keep Option B past the age of 65. OPM attached a January 24, 2018 form letter informing appellant that, due to a computer error, OWCP had deducted OLI premiums for life insurance code W0 past her 65th birthday without having an OLI Post-65 Reduction Election documented in her case file, and that consequently, OLI premium deductions had stopped after her last birthday. On February 7, 2018 appellant completed the form indicating that she wished to continue her current OLI at no reduction.

On June 8, 2019 OPM notified OWCP that appellant was eligible to continue FEGLI coverage. It requested that OWCP deduct for code X0 basic Option A standard with no reduction and Option B times five with no reduction. OPM indicated that this was the second request to have her Option B election reinstated after age 65. It noted that she should also have Option A as well and that the commencement date for the postretirement deductions was September 1, 1992. OPM attached a form letter dated January 13, 1993 in which it noted that appellant's final salary upon which FEGLI was based was \$25,930.00; that basic life insurance withholding of premiums should have begun on September 1, 1992; that she had elected no postretirement reduction; and that she had elected to receive both the standard option and the additional option times five. In a letter dated December 9, 1995, it notified OWCP that appellant was eligible to continue FEGLI coverage and requested that OWCP deduct for code X basic Option A standard and Option B times five. OPM further noted that her postretirement election was no reduction and the commencement date for the postretirement deductions was September 1, 1992.

OWCP also received the first page of a FEGLI form entitled Continuation of Life Insurance Coverage as an annuitant or compensation, which appellant had signed on August 10, 1992. The form indicated that she selected no reduction in her basic life insurance coverage postretirement. The last paragraph of this page referenced Optional Life Insurance Coverage, however, the first page ended without an election option and no other pages of this form were attached.

In a letter dated August 8, 2019, OWCP notified appellant of her continued entitlement to compensation benefits effective July 21, 2019. The letter indicated that deductions were being made for postretirement basic life insurance in the amount of \$58.98 and optional life insurance in the amount of \$504.00.

On August 20, 2019 OWCP advised appellant of its preliminary determination that an overpayment of compensation occurred in the amount of \$75,741.38 for the period September 1, 1992 through July 20, 2019 because it had been provided with the incorrect code (W0) for OLI by OPM instead of the correct code (X0), and it had never deducted the premium for her postretirement optional life insurance. It found that she was without fault in the creation of the overpayment because it erred in calculating the benefits, and it was not shown that she had actual knowledge of the calculation error. OWCP calculated the overpayment amount of \$75,741.38 by adding the overpayment due to the OLI of \$57,560.32 to the overpayment for postretirement basic life insurance error of \$18,181.06. It advised appellant of her right to request a telephone conference, a final decision based on the written evidence, or a prerecoumpment hearing, if she objected to the decision or requested waiver of the recovery of the overpayment. OWCP further advised her to complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. It mailed the preliminary determination to appellant's address of record and afforded her 30 days to provide the requested information. A copy was also sent to her representative. No response was received by OWCP.

A manual adjustment form dated August 20, 2019 noted that the wrong OLI code of W0 had been deducted instead of X0. It noted that the OLI cost previously paid was \$40,614.20, while the OLI cost of the correct entitlement was \$98,174.52, a difference of \$57,560.32.

By decision dated September 26, 2019, OWCP finalized its preliminary determination that appellant had received an overpayment of compensation in the amount of \$75,741.38 for the period September 1, 1992 through July 20, 2019, because improper deductions or no deductions were taken from her compensation for life insurance for that period. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery because she had not responded to the overpayment recovery questionnaire or provided supporting financial documentation. OWCP directed repayment of the overpayment by deducting \$600.00 every 28 days from her continuing wage-loss compensation benefits.⁴

⁴ Overpayment payment instructions were also provided instructing that either a check or money order could be sent to OWCP. Appellant was advised that interest would begin to accrue as of the date of the final decision, and that if OWCP did not receive payment, or some indication that appellant intended to make payment within 30 days, her overpayment would be considered a delinquent debt.

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

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the optional life insurance options.⁷ The coverage for basic life insurance is effective unless waived⁸ and the premiums for basic life insurance and optional life insurance coverage are withheld from the employee's pay.⁹

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides 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) provide 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).¹⁰

When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$75,741.38 for the period September 1, 1992 through July 20, 2019.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ *Id.* at § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *See M.M.*, Docket No. 19-1872 (issued April 2, 2020); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

¹¹ 5 U.S.C. § 8707(d). *See M.M., id.*; *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

The record reflects that OPM notified OWCP on May 7, 2018 and June 8, 2019 that, as a compensationner, appellant was eligible to continue FEGLI coverage.

Regarding appellant's basic life insurance election, the record substantiates that on August 10, 1992 appellant signed an election form electing no reduction, maximum coverage. The record also reflects that OWCP noted on January 24, 2018 that it had deducted appellant's life insurance premiums under code W0, instead of code X0 until appellant's 65th birthday. Regarding the overpayment based upon appellant's basic life insurance election, OWCP found that an overpayment existed in the amount of \$18,181.06 because no premiums had been deducted for appellant's basic life insurance coverage since 1992. OWCP did not, however, explain why the deductions made under code W0 would not have included the required premiums for appellant's basic life insurance coverage. The evidence of record is therefore unclear as to whether premiums had been deducted for appellant's basic life insurance coverage, which she elected on August 10, 1992. The Board therefore finds that OWCP has not established the amount of overpayment based upon failure to deduct premiums for appellant's basic life insurance coverage.

Regarding the overpayment based upon appellant's OLI election, the Board finds that the record does not reflect appellant's OLI election as of September 1, 1992. The FEGLI form dated August 12, 1992 is incomplete. After OPM advised OWCP that there was no record of appellant's OLI election, appellant signed a document dated January 24, 2018. However, the document appellant signed on January 24, 2018 does not establish a retroactive election of OLI coverage to 1992 for which appellant can be liable for past premiums.¹² Appellant's OLI election choice from 1992 to 2018 has therefore not been established.¹³ As the evidence of record does not establish appellant's election of OLI coverage, the Board finds therefore that OWCP has not met its of proof to establish fact of overpayment as of September 1, 1992, based upon failure to deduct OLI premiums.

Based upon the record as presented to the Board, the Board thus finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$75,741.38.¹⁴

CONCLUSION

The Board finds that OWCP has not met its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$75,741.38 for the period September 1, 1992 through July 20, 2019.

¹² See *M.M.*, *supra* note 10.

¹³ *Supra* note 10.

¹⁴ In light of the Board's disposition of issue 1, the second and third issues regarding waiver and recovery of the overpayment are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 16, 2020
Washington, DC

Christopher J. Godfrey, 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