

life insurance (PRBLI) premiums from her wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$731.84 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 24, 2010 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment, including extreme workplace harassment. On January 20, 2011 OWCP accepted her claim for major depressive disorder (single episode, severe) and adjustment disorder (mixed anxiety and depressed mood).

On February 15, 2011 appellant filed a Form CA-2 alleging that she developed an emotional condition due to retaliation for her prior claim. OWCP denied her claim. Appellant appealed to the Board and on November 21, 2014,⁴ the Board found that she had not substantiated additional factors of employment. By decision dated August 17, 2016, OWCP denied modification of its prior decisions.

On April 27, 2017 appellant filed a Form CA-2, emotional condition claim, and alleged overwork. OWCP accepted her claim for aggravation of major depressive disorder, single episode, and aggravation of PTSD on June 15, 2018.

On June 28, 2017 appellant filed a Form CA-2 alleging that she developed an emotional condition due to factors of her federal employment. She stopped work on June 11, 2018. OWCP accepted this claim for aggravation of PTSD, aggravation of major depressive disorder, and aggravation of adjustment disorder with mixed anxiety and depressed mood on November 18, 2019.

On August 5, 2017 appellant filed a Form CA-2 for an emotional condition due to harassment. On July 12, 2019 OWCP accepted her claim for aggravation of major depressive disorder, recurrent severe without psychotic features, aggravation of adjustment disorder with mixed anxiety and depressed mood, and aggravation of PTSD.

By decision dated October 10, 2019, OWCP paid appellant wage-loss compensation for the period February 15, 2011 through February 16, 2012 due to her January 24, 2010 employment injury.

³ Docket No. 14-1423 (issued November 21, 2014), *petition for recon. denied*, Docket No. 14-1423 (issued April 22, 2015); Docket No. 16-1868 (issued March 13, 2017).

⁴ *Id.*

On April 16, 2020 the Office of Personnel Management (OPM) informed OWCP that appellant, as a compensationner, was eligible to receive continued life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) program. It notified OWCP that she had elected PRBLI with no reduction. OPM indicated that the effective date of appellant's postretirement deductions was July 6, 2019 and that her final base salary was \$64,413.00. OPM enclosed a FEGLI continuation of life insurance coverage form signed by appellant on January 21, 2020 electing PRBLI basic with no reduction.

On May 15, 2020 OWCP notified appellant of its preliminary determination, that she had received an overpayment of compensation in the amount of \$1,387.89 because it had failed to deduct PRBLI premiums from her wage-loss compensation for the period July 6, 2019 through April 25, 2020. It advised that it had not deducted premiums for PRBLI of \$142.71 per month or \$1,712.52 per year, resulting in an overpayment of \$131.73 every 28 days from July 6, 2019 through April 25, 2020 for a total of 295 days or 10.53 periods. OWCP multiplied \$131.73 by 10.53 to reach \$1,387.89. It further informed appellant of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that she complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, it provided an overpayment action request form and 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 prercoupment hearing.

On May 28, 2020 appellant requested waiver of recovery of the overpayment. She did not complete the Form OWCP-20. Appellant provided a mortgage, credit union, and insurance statement and a cable, internet, and utility bill.

On June 2, 2020 OWCP again requested that appellant complete Form OWCP-20. It afforded her 15 days to respond. Appellant did not respond.

By decision dated June 25, 2020, OWCP finalized its preliminary determination finding that appellant had received an overpayment of wage-loss compensation in the amount of \$1,387.89 for the period July 6, 2019 through April 25, 2020. It found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as there was no evidence to substantiate that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP found that it would recover the overpayment by deducting \$731.84 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

FECA⁵ 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.⁶ When an overpayment has been made to an individual because of an error of fact or law,

⁵ *Supra* note 2.

⁶ 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.⁷

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.⁸ The coverage for basic life insurance is effective unless waived,⁹ and premiums for basic and optional life coverage are withheld from the employee's pay.¹⁰ 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.¹¹ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹² however, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.¹³

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).¹⁴

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

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8702(a).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

¹¹ *Id.* at § 8706.

¹² *Id.* at § 8707(b)(2).

¹³ *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).

¹⁴ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

employment, he or she filed an election or waiver that remains in effect.¹⁵ 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.¹⁶

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 premiums continue until death. Prior to age 65, the claimant must pay for both BLI and PRBLI if it has been elected.”¹⁷

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.¹⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$1,387.89 because OWCP had failed to deduct PRBLI premiums from her wage-loss compensation for the period July 6, 2019 through April 25, 2020.

On April 16, 2020 OPM notified OWCP that appellant had elected PRBLI at no reduction. It enclosed an election form signed by her on January 21, 2020. Based solely on this information, OWCP found that appellant had received an overpayment of compensation as it failed to deduct premiums for PRBLI from July 6, 2019 through April 25, 2020.

While in compensation status, appellant is responsible for all insurance premiums, including for PRBLI at whatever option selected.¹⁹ The Board finds, however, that OWCP failed to adequately support its determination that she received an overpayment of compensation from July 6, 2019 through April 25, 2020. 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 January 21, 2020 electing PRBLI with no reduction. The form does not specify the date of the effective election. The date that appellant signed the election form, January 21, 2020, is after

¹⁵ 5 C.F.R. § 870.504(a)(1).

¹⁶ *Id.* at § 504(b).

¹⁷ Federal (FECA) Procedure Manual, Part 2, Claims, *Compensation Claims*, Chapter 2.901.15(c)(3) (February 2013).

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

¹⁹ *J.L.*, Docket No. 14-1094 (issued June 25, 2015).

July 6, 2019, the starting date of the overpayment found by OWCP in this case and the 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.²⁰ In *N.J.*,²¹ 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 July 6, 2019, it has not met its burden of proof to establish that she received an overpayment of compensation from July 6, 2019 through April 25, 2020 due to its failure to deduct premiums for PRBLI.²²

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$1,387.89 because OWCP had failed to deduct PRBLI premiums from her wage-loss compensation for the period July 6, 2019 through April 25, 2020.

²⁰ See generally *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019).

²¹ Docket No. 13-2164 (issued April 18, 2014).

²² *D.P.*, Docket No. 20-0546 (issued November 19, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 14, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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