

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

J.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Citrus Heights, CA, Employer**

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**Docket No. 20-1545
Issued: July 27, 2021**

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 August 20, 2020 appellant filed a timely appeal from a February 28, 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.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation, for which she was without fault, in the amount of \$11,451.43 for the period September 11, 2010 through August 18, 2018; (2) whether OWCP properly denied waiver of recovery of the overpayment; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(3) whether OWCP properly required recovery of the overpayment by deducting \$690.63 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On April 24, 2008 appellant, then a 49-year-old window and distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2018 she injured her low back, right knee, shoulders, neck, and head when a coworker ran into her while in the performance of duty. She stopped work on April 21, 2008 and returned to work on April 24, 2008. OWCP accepted the claim for lumbar sprain. It subsequently expanded acceptance of the claim to include neck sprain, thoracic sprain, a sprain of the right knee and leg, and a recurrent episode of severe major depression without mention of psychotic behavior.³ OWCP paid appellant wage-loss compensation on the supplemental rolls, beginning May 1, 2008.

On June 8, 2010 OWCP advised appellant that it was placing her on the periodic compensation rolls effective April 11, 2010.⁴ It indicated that it was deducting premiums for basic life insurance (BLI) and optional life insurance (OLI) from her compensation payments. OWCP did not deduct premiums for postretirement basic life insurance (PRBLI).

In a letter dated July 30, 2018, OPM informed OWCP that appellant, as a compensationoner, was eligible to continue coverage under the Federal Employees' Group Life Insurance (FEGLI) Program. It further notified OWCP that she had elected PRBLI with no reduction commencing September 11, 2010. OPM advised that appellant's final base salary for FEGLI purposes was \$54,257.00.

On August 19, 2018 OWCP began deducting premiums for PRBLI from appellant's continuing compensation payments.

In a notice dated October 2, 2018, OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$11,443.73 because it had failed to deduct PRBLI premiums from her compensation payments for the period September 1, 2010 through August 18, 2018. It further notified her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. 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, if she objected to the preliminary notification findings or requested waiver of recovery of the overpayment.

³ OWCP had previously accepted that appellant sustained right hip strain, lumbar disc degeneration and disc protrusion, right knee sprain, and disorders of the sacrum due to a May 10, 2003 employment injury, assigned OWCP File No. xxxxxx807 and lumbar sprain due to a July 14, 2005 employment injury, assigned OWCP File No. xxxxxx597.

⁴ A notification of personnel action dated September 30, 2010 indicated that the Office of Personnel Management (OPM) had approved appellant's disability retirement and that her last day in pay status was September 10, 2009. She was a PS07/0 at the time of her retirement which yielded a yearly salary of \$54,257.00 effective November 21, 2009.

On October 28, 2018 appellant, through her then-counsel, requested a prerecouplement hearing before a representative of OWCP's Branch of Hearings and Review. She submitted a completed Form OWCP-20.

Following a preliminary review, by decision dated January 29, 2019, OWCP's hearing representative vacated the October 2, 2018 preliminary overpayment determination, finding that the evidence of record did not contain a signed form documenting appellant's election of life insurance.

Subsequently, OWCP received a June 30, 2018 letter from appellant reducing her Part B life insurance from a multiple of five to a multiple of two.

On February 27, 2019 OPM provided a FEGLI form completed by appellant on July 4, 2010. Appellant elected BLI with no reduction in retirement and selected Option A and Option B with five multiples.

On March 19, 2019 OWCP issued a preliminary determination that appellant had received an overpayment of \$11,976.60 because it had failed to deduct PRBLI premiums from her compensation payments for the period July 4, 2010 through August 18, 2018. It further advised her of its preliminary determination that she was without fault in creating the overpayment of compensation.

On April 9, 2019 appellant's then-counsel requested a prerecouplement hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted a completed OWCP-20.

A telephonic hearing was held on June 9, 2019.

In a July 1, 2019 response to appellant's request for information regarding the calculation of the overpayment, OWCP advised that it had automatically calculated the amount using its computerized system. It provided a portion from its preliminary overpayment determination setting for the monthly rates for each \$1,000.00 of insurance in effect during each period.

By decision dated August 16, 2019, OWCP's hearing representative set aside the preliminary overpayment determination. She found that OWCP had incorrectly determined that the period of the overpayment had begun on July 4, 2010 instead of September 11, 2010. The hearing representative further found that OWCP had failed to adjust the overpayment based on appellant's change in election of life insurance effective July 1, 2018.

The record contains a computer calculation form for PRBLI setting forth the monthly rate for premiums from September 11, 2010 to August 18, 2018. It indicated that the deduction amount was \$11,697.83. In a separate calculation form, OWCP found that OLI with a multiple of two yielded a premium deduction of \$190.40 for the period July 1 to August 18, 2018.

On August 27, 2019 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$11,451.43 because it had failed to deduct PRBLI premiums from her compensation payments for the period September 11, 2010 through August 18, 2018. It further found that it had not properly adjusted her OLI to Option B

with two multiples from July 1 to 18, 2018, which had resulted in an underpayment of compensation. OWCP indicated that the overpayment amount had been calculated automatically using the Integrated Federal Employees' Compensation System (iFECS). It set forth the monthly rates for each \$1,000.00 of basic insurance for the periods September 11, 2010 to December 31, 2011, January 1, 2012 to August 23, 2014, August 24, 2014 to December 31, 2015, and January 1, 2016 to August 18, 2018. OWCP also set forth the deduction amounts for each period, which it found yielded an \$11,697.83 overpayment of compensation. From this amount OWCP subtracted the \$246.40 that it had over deducted from appellant's compensation for OLI coverage from July 1 to August 18, 2018, to find a total overpayment of \$11,451.43. It requested that she complete the enclosed Form OWCP-20 and submit supporting financial documents. OWCP further advised appellant that she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing, within 30 days.

On September 18, 2019 appellant's then counsel requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and submitted a completed Form OWCP-20. In an accompanying letter dated September 13, 2019, appellant requested waiver of recovery of the overpayment. She also requested a breakdown of the amount that she was charged for insurance from September 11, 2009 to August 18, 2018. Appellant maintained that she wanted to make sure the amount of the overpayment was correctly calculated.

A telephonic hearing was held on January 6, 2020. During the hearing, appellant's then-counsel advised that her expenses had changed since the submission of the September 2019 OWCP-20. He questioned OWCP's calculation of the overpayment, noting that he had asked for an itemized explanation. Appellant also asserted that she had requested an itemized statement showing how much life insurance she should have paid, what she did pay, and the amount owed each 28 days. She indicated that she had shown OWCP's decision to a certified public accountant who advised that he did not have enough information to determine whether the amount was correct. OWCP's hearing representative advised that a computer system automatically calculated the overpayment based on coding from OPM. Appellant described her monthly income and expenses.

On January 20, 2020 appellant submitted a Form OWCP-20 signed January 10, 2020 and supporting financial documentation.

By decision dated February 28, 2020, OWCP's hearing representative found that appellant had received an overpayment of compensation in the amount of \$11,451.43 for the period September 11, 2010 through August 18, 2018 because OWCP failed to deduct premiums for PRBLI from her compensation.⁵ He found that she was without fault in the creation of the overpayment, but denied waiver as her income exceeded her expenses by more than the allotted amount. OWCP's hearing representative determined that the overpayment would be recovered by deducting \$690.63 from appellant's continuing compensation every 28 days.

⁵ In the issue, OWCP's hearing representative indicated that OWCP had found an overpayment of \$11,443.73 rather than \$11,451.43; however, he ultimately affirmed the finding of an overpayment of compensation in the amount of \$11,451.43.

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 insurance coverage are withheld from the employee's pay.¹¹

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).¹²

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.¹³

⁶ *Supra* note 1.

⁷ 5 U.S.C. § 8102(a).

⁸ *Id.* at § 8129(a).

⁹ 5 U.S.C. § 8702(a).

¹⁰ *Id.* at § 8702(b).

¹¹ *Id.* at § 8707.

¹² *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

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

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation for the period September 11, 2010 through August 18, 2018; however, the case is not in posture for decision regarding the amount of the overpayment.

OPM advised OWCP on July 30, 2018 that appellant had elected PRBLI with no reduction effective September 11, 2010. On February 27, 2019 OPM submitted the FEGLI form that she had completed on July 4, 2010 electing BLI with no reduction in retirement. Appellant also selected OLI Option A and Option B with five multiples. OWCP, however, failed to deduct premiums for PRBLI until August 18, 2018, thereby creating an overpayment of compensation. It explained to appellant how the overpayment occurred in its preliminary determination of the overpayment.¹⁴

The Board finds, however, that OWCP failed to provide a detailed explanation regarding its calculations of the amount of the overpayment.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹⁵ In its preliminary overpayment determination, OWCP advised that it had computed the overpayment automatically using iFECS, an automated system. It provided the monthly rates for each \$1,000.00 of insurance coverage in effect during the applicable time period. OWCP informed appellant that iFECS had calculated the overpayment of compensation due to its failure to deduct premiums for PRBLI from September 11, 2010 to August 18, 2018 as \$11,697.83. From this amount OWCP subtracted an underpayment of \$246.40 due to the over deduction of premiums for OLI for the period September 11, 2010 to August 18, 2018, to find a total overpayment of \$11,451.43.

Appellant alleged that she was unable to calculate the overpayment from the numbers provided by OWCP. While OWCP set forth the monthly rate for deducting coverage for each \$1,000.00 of coverage, it did not include all of the variables required for her to understand its calculations. The mathematical calculations performed by the computer program are not reproducible from the information provided.¹⁶

It is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions.¹⁷ Its procedures provide that a preliminary notice of overpayment must clearly set forth the reason for the overpayment and a clearly written

¹⁴ See *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

¹⁵ See *R.U.*, Docket No 16-0027 (issued March 24, 2016); *L.D.*, Docket No. 15-1102 (issued January 20, 2016).

¹⁶ Cf. *J.C.*, Docket No. 19-0122 (issued June 11, 2019) (OWCP provided mathematical calculations of the overpayment created by its failure to deduct life insurance premiums that were clear and reproducible).

¹⁷ 20 C.F.R. § 10.126; *R.U.*, *supra* note 15.

explanation as to how the overpayment was calculated.¹⁸ OWCP should clearly explain its calculations regarding the amount that should have been deducted for each period and the evidence supporting such deductions identified.¹⁹

Additionally, the Board notes that OWCP reduced the overpayment amount by the amount that had over withheld for OLI from September 11 to August 18, 2018. Although such an offset appears administratively straightforward, the Board has held that it may circumvent established legal procedures and protections if appellant is entitled to consideration of waiver.²⁰ Such offsets are not allowed, as they permit an unrestricted recovery of the offset portion of the overpayment without regard to the relevant factors set forth in 20 C.F.R. § 10.441(a)²¹ which denies administrative due process with respect to the amount offset.²²

The case will be remanded for proper findings as to the amount of overpayment based on OWCP's failure to properly deduct premiums for PRBLI. After such further development as deemed necessary, OWCP should issue *de novo* decision.²³

CONCLUSION

The Board finds that appellant received an overpayment of compensation for the period September 11, 2010 through August 18, 2018; however, that the case is not in posture for decision regarding the amount of the overpayment.

¹⁸ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

¹⁹ See *G.A.*, Docket No. 15-0095 (issued April 2, 2015).

²⁰ *P.S.*, Docket No. 18-1438 (issued February 1, 2019); *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

²¹ 20 C.F.R. § 10.441(a). This section states that in collecting an overpayment of compensation, OWCP shall decrease later payment of compensation by 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 hardship.

²² *R.H.*, Docket No. 17-1933 (issued February 15, 2018); *R.O.*, Docket No. 17-0894 (issued January 26, 2018).

²³ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 27, 2021
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