

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

M.B., Appellant)	
)	
and)	Docket No. 20-0560
)	Issued: June 10, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Oxnard, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 14, 2020 appellant filed a timely appeal from November 6 and 26, 2019 merit decisions 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 to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$27,915.61 for the period August 1, 2004 through September 14, 2019 for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence following the November 26, 2019 decision. 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.*

Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether it properly required recovery of the overpayment by deducting \$600.00 from appellant's continuing compensation payments every 28 days; (4) whether appellant received an overpayment of compensation in the amount of \$12,782.49 for the period August 1, 2017 through August 17, 2019 because life insurance premiums were improperly deducted; (5) whether OWCP properly denied waiver of recovery of the overpayment; and (6) whether it properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On April 2, 1988 appellant, then-a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 1988 he reached for an all-purpose container (APC) that was about to fall off the dock and injured his low back while in the performance of duty. He stopped work on April 1, 1988. OWCP accepted the claim for low back strain, lumbar spine stenosis and displacement of lumbar intervertebral disc without myelopathy. The record reflects that OWCP paid appellant FECA wage-loss compensation benefits on the periodic rolls.

In a letter dated June 14, 1988, entitled "NOTICE TO INDIVIDUALS WITH FUNDS IN THE CIVIL SERVICE RETIREMENT SYSTEM [CSRS]" OWCP advised appellant that FECA was not a retirement system. Appellant was advised that he may elect Civil Service Retirement benefits at some time in the future, should it become necessary to reduce or terminate his compensation. He was also cautioned that if he received his contributions from the Retirement Fund, he would lose all entitlement to Civil Service annuity.

In a claim for compensation (Form CA-7) dated May 18, 1988, appellant's supervisor noted that appellant had been employed in federal civilian service employment for a period of two years and seven months. A rehabilitation counselor's report dated November 9, 1988 indicated that appellant began work at the employing establishment in 1984.

An OWCP worksheet dated June 14, 1994 calculated premiums based upon a basic life (option B) and postretirement basic life insurance (Option C).

In a January 24, 2018 letter to appellant, OWCP advised that all FEGLI optional life insurance (OLI) premium deductions should automatically stop when a claimant reaches age 65, unless an election is made to continue OLI coverage beyond this age. The letter informed him that, due to computer error, OWCP had deducted OLI premiums past his 65th birthday without having an OLI post-65 election in his case file. OWCP further explained that consequently, appellant's OLI premium deductions had stopped after his last birthday and that OWCP did not have authorization to reinstate these deductions without having documentation from OPM instructing it to do so.

In a letter dated March 22, 2018, OPM advised OWCP that it should deduct life insurance premiums for appellant under code Z1 for basic life insurance at 50 percent reduction, Option B-5x-no reduction, and Option C-1X-no reduction. It further advised that commencing date for the postretirement deductions was December 20, 1992.

OWCP requested that appellant inform OPM of his post-65 OLI election. Appellant selected the option to continue his OLI at no reduction and signed the form on January 27, 2018.

On August 23, 2019 OWCP forwarded a FERS/SSA dual benefit calculation form to SSA.

On September 16, 2019 SSA completed the FERS/SSA dual benefits calculation form. The form indicated that with FERS appellant was entitled to a monthly payment rate of: \$765.00, effective August 2004, and without FERS he was entitled to a monthly payment rate of \$639.00; effective December 2004 with FERS he was entitled to a monthly payment rate of \$786.00, and without FERS he was entitled to a monthly payment rate of \$656.20; effective December 2005 with FERS he was entitled to a monthly payment rate of \$818.00, and without FERS he was entitled to a monthly payment rate of \$683.10; effective December 2006 with FERS he was entitled to a monthly payment rate of \$845.00, and without FERS he was entitled to a monthly payment rate of \$705.60; effective December 2007 with FERS he was entitled to a monthly payment rate of \$864.40, and without FERS he was entitled to a monthly payment rate of \$721.70; effective December 2008 with FERS he was entitled to a monthly payment of \$914.40, and without FERS he was entitled to a monthly payment rate of \$763.60; effective December 2009 with FERS he was entitled to a monthly payment rate of \$914.50, and without FERS he was entitled to a monthly payment rate of \$763.60; effective December 2010 with FERS he was entitled to a monthly payment rate of \$914.50, and without FERS he was entitled to a monthly payment rate of \$763.60; effective December 2011 with FERS he was entitled to a monthly payment rate of \$947.90, and without FERS he was entitled to a monthly payment rate of \$791.00; effective December 2012 with FERS he was entitled to a monthly payment rate of \$963.90, and without FERS he was entitled to a monthly payment rate of \$804.50; effective December 2013 with FERS he was entitled to a monthly payment rate of \$977.90, and without FERS he was entitled to a monthly payment rate of \$816.50; effective December 2014 with FERS he was entitled to a monthly payment rate of \$994.90, and without FERS he was entitled to a monthly payment rate of \$830.40; effective December 2015 with FERS he was entitled to a monthly payment rate of \$994.90, and without FERS he was entitled to a monthly payment rate of \$830.40; effective December 2016 with FERS he was entitled to a monthly payment rate of \$998.00, and without FERS he was entitled to a monthly payment rate of \$832.80; effective December 2017 with FERS he was entitled to a monthly payment rate of \$1,018.00, and without FERS he was entitled to a monthly payment rate of \$849.50; and effective December 2018 with FERS he was entitled to a monthly payment rate of \$1,046.50, and without FERS he was entitled to a monthly payment rate of \$873.20.

A FERS offset calculation worksheet compiled by OWCP on September 17, 2019 calculated an overpayment in the amount of \$27,915.61, for the period August 1, 2004 to September 14, 2019.

In a letter dated September 17, 2019, OWCP advised appellant that it had recently found that he had been receiving SSA age-related retirement benefits since August 1, 2004. It explained that it was adjusting his wage-loss compensation, effective October 12, 2019, to offset the portion of his SSA age-related retirement benefits attributable to his federal service as an employee under the FERS retirement system. OWCP informed him that the portion of the SSA benefits attributed to his federal service required an offset of the FECA benefits. It explained that his current SSA

monthly income was \$1,046.50 and without FERS, it was \$873.20. OWCP explained that his federal service increased his monthly SSA payment by \$173.30, which must be offset against his compensation benefits. It advised appellant that his new net compensation payment would be \$2,632.85 every 28 days.

In a preliminary overpayment determination dated September 17, 2019, OWCP advised appellant that he had received an overpayment of compensation in the amount of \$27,915.61, for the period August 1, 2004 through September 14, 2019, because compensation was not reduced by the FERS/FECA amount. It found that he was without fault in the creation of the overpayment. OWCP informed appellant that, if he believed the overpayment should be waived, he should complete an overpayment recovery questionnaire (Form OWCP-20) and submit detailed supporting financial documentation. It explained its calculation of the overpayment, informed appellant of the actions he could take, and allotted 30 days for him to respond.

OWCP compensation payment history records indicate that from August 1, 2017 until August 17, 2019, no postretirement basic life insurance (PRBLI) premiums were deducted. A September 17, 2019 OWCP manual adjustment form revealed that for the period from August 1, 2017 to August 17, 2019, without the deductions, appellant received \$85,545.06; however, with the deductions, he should have received \$72,762.58. OWCP noted that an overpayment of compensation in the amount of \$12,782.48 had occurred.

In a preliminary overpayment determination dated September 18, 2019, OWCP advised appellant that he had received an overpayment of compensation in the amount of \$12,782.49 from August 1, 2017 through August 17, 2019, because incorrect deductions for PRBLI premiums were made from his continuing compensation benefits. It provided an overpayment memorandum which calculated the overpayment amounts from August 1, 2017 through August 17, 2019. OWCP further determined that appellant was not at fault in the creation of the overpayment. It informed appellant that, if he believed the overpayment should be waived, he should complete a Form OWCP-20 and submit detailed supporting financial documentation. It explained its calculation of the overpayment, informed appellant of the actions he could take, and allotted 30 days for him to respond.

On October 3, 2019 OWCP received appellant's completed Form OWCP-20, signed on September 26, 2019, regarding the September 17, 2019 preliminary overpayment determination in the amount of \$27,915.61. Appellant requested a precoupment hearing regarding waiver of recovery of the overpayment, and also marked the box for a telephone hearing. He requested waiver because he was without fault in the creation of the overpayment.

On October 3, 2019 OWCP also received appellant's completed Form OWCP-20, signed on September 26, 2019, regarding the September 18, 2019 preliminary overpayment determination in the amount of \$12,782.49. Appellant requested waiver because he was without fault in the creation of the overpayment. He listed income of \$9,853.00 per month, expenses of \$4,188.00 per month, and assets of \$4,396.52. In another typed summary of debts dated September 25, 2019 appellant listed monthly debts for himself and his wife totaling \$8,964.19 monthly.

By decision dated November 6, 2019, OWCP finalized the September 18, 2019 preliminary overpayment determination for the period August 1, 2017 through August 17, 2019 in the amount of \$12,782.49. It found that appellant was without fault, but denied waiver of recovery of the overpayment because the evidence did not substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by withholding \$200.00 from appellant's continuing compensation payments every 28 days.

In a letter dated November 12, 2019, OWCP requested that appellant provide additional information related to his assets and expenses.

On November 21, 2019 OWCP received additional documentation related to appellant's assets. Appellant listed additional liquid assets of \$6,504.68. On November 26, 2019 OWCP received additional information from appellant regarding his income and expenses. Appellant listed his income as \$10,253.00 and his expenses as \$7,772.03.

By decision dated November 26, 2019, OWCP finalized the September 17, 2019 preliminary overpayment determination in the amount of \$27,915.61 for the period August 1, 2004 through September 14, 2019 for which he was without fault, as he had received FECA wage-loss compensation, which was not reduced by the FERS/SSA offset. It found that recovery of the overpayment would not create a severe financial hardship as appellant had a monthly income that exceeded his expenses by more than the allotted amount of \$50.00, and that the overpayment would be recovered by deduction of \$600.00 every 28 days from appellant's continuing compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of 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.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not established that appellant received an overpayment of compensation.

OWCP determined that appellant received an overpayment of compensation from August 1, 2004 until September 14, 2019 because he received compensation from OWCP and SSA benefits without an appropriate offset. The case record, however, does not establish that he was ever covered under FERS. Rather, the evidence only points to coverage under the CSRS. It, therefore, remains unclear whether appellant was covered under a federal retirement annuity program during the period of the overpayment.

As OWCP has not established that appellant received an overpayment of compensation during the period August 1, 2004 through September 14, 2019, the Board finds that OWCP has not met its burden of proof.⁷

LEGAL PRECEDENT -- ISSUE 4

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the OLI options.⁸ The coverage for BLI is effective unless waived⁹ and premiums for BLI and OLI coverage are withheld from the employee's pay.¹⁰ Upon retirement or upon separation from the employing establishment or being placed on FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹¹ BLI 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 OLI coverage which is accomplished by authorizing withholdings from his compensation.¹³

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁷ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

⁸ 5 U.S.C. § 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 F.F.*, Docket No. 19-1630 (issued April 7, 2020); *B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

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 employment, he or she filed an election or waiver that remains in effect.¹⁵ An employee who does not file a life insurance election with his or her employing office, in a manner designated by OPM, specifically electing a type of optional insurance, is considered to have waived it and does not have that type of optional insurance coverage.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 4

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$12,782.49 for the period August 1, 2017 through August 17, 2019.

In a January 24, 2018 letter to appellant, OWCP advised that all FEGLI optional life insurance (OLI) premium deductions should automatically stop when a claimant reaches age 65, unless an election is made to continue OLI coverage beyond this age. The letter informed him that “due to computer error, OWCP has deducted OLI premiums past his 65th birthday without having an OLI post-65 election documented in his case file. Appellant was then requested to inform OPM of his post-65 OLI election. He selected the option to continue his OLI at no reduction and signed the form on January 27, 2018, indicating, “I want to continue my current OLI at no reduction.” However, the record does not include an election form reflecting appellant’s initial OLI and PRBLI selections. Furthermore, the January 27, 2018 letter form appellant did not advise or request that he wished to elect OLI or PRBLI benefits retroactive to August 1, 2017. The current record does not include any other FEGLI election form signed by appellant indicating his life insurance elections as of August 1, 2017.

¹⁴ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁵ 5 C.F.R. § 870.504(a)(1).

¹⁶ *Id.* at § 870.504(b).

¹⁷ 5 U.S.C. § 8707(d); see also *B.B.* and *S.B.*, *supra* note 13.

The Board finds that OWCP failed to adequately support its determination that appellant received an overpayment of compensation for the period August 1, 2017 through August 17, 2019. The record indicates that appellant elected that his OLI be continued on January 27, 2018 at no reduction. However, the record does not contain an election form designating the options selected. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage, and the type of coverage elected after separation from federal service or retirement.¹⁸

As OWCP has not factually established appellant's election of optional life insurance at no reduction, the Board finds that it has not met its burden of proof to establish that appellant received an overpayment of compensation from August 1, 2017 through August 17, 2019.¹⁹

CONCLUSION

The Board finds that OWCP has not met its burden of proof to establish that appellant received an overpayment of compensation during the period August 1, 2004 through September 14, 2019 for which he was not at fault because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits without an appropriate offset. The Board further finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$12,782.48 for the period August 1, 2017 through August 17, 2019.

¹⁸ See *G.C.*, Docket No. 18-1451 (issued May 5, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019).

¹⁹ In light of the Board's disposition of Issue 4, Issues 5 and 6 are rendered moot.

ORDER

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

Issued: June 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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