

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

_____)	
D.U., Appellant (widow of G.U.))	
)	
and)	Docket No. 20-0594
)	Issued: June 4, 2021
DEPARTMENT OF THE ARMY, AIRBORNE)	
CORPS, Fort Bragg, NC, Employer)	
_____)	

Appearances:
Ernest J. Wright, Esq., for the appellant¹
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 21, 2020 appellant, through counsel, filed a timely appeal from a January 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 8, 2020 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

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 \$51,537.14 for the period April 14, 1990 through August 26, 2019 because postretirement basic life insurance (PRBLI) premiums were not deducted from his FECA compensation and optional life insurance (OLI) premiums were under deducted from his FECA compensation; and (2) whether it properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On February 23, 1988 the employee, then a 43-year-old safety specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 1988 he injured his lower back when his right foot slipped off a tower ladder and he fell, landing on his back, while in the performance of duty. He stopped work on February 23, 1988. OWCP accepted the claim for low back strain, a neck strain, and herniated cervical discs at C4-5 and C5-6, and assigned the claim OWCP File No. xxxxxx054.

On August 18, 1989 the employee filed another Form CA-1 alleging that on August 1, 1989 he experienced severe pain in his head, neck, arms, right leg, and feet while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that this was a recurrence resulting from the employee's injury in February 1988, and indicated that, when he stopped work, his salary was \$37,510.00. OWCP accepted the claim for a cervical strain, assigned the claim OWCP File No. xxxxxx413, and administratively combined OWCP File Nos. xxxxxx054 and xxxxxx413, with the latter serving as the master file.

A March 23, 1981 Federal Employees' Group Life Insurance (FEGLI) life insurance election form signed by the employee indicated that he selected basic life insurance (BLI), standard OLI, additional OLI worth three times his annual basic pay, and family OLI.

An August 31, 1988 memorandum of record indicates that OWCP paid the employee intermittent temporary total disability compensation as of April 8, 1988; however, the memorandum did not reflect whether or not deductions were made for life insurance premiums.

The employee stopped work on January 29, 1990 and did not return. An April 13, 1990 notification of personnel action form Standard Form (SF)-50 indicated that the employee's employment was terminated, effective that date. It further confirmed that he had elected BLI, standard OLI, additional OLI worth three times his annual basic pay, and family OLI. The form stated that the employee's salary was \$38,855.00.

The evidence of record includes documentation regarding payment of the employee's FECA wage-loss compensation. June 8 and August 6, 1990 daily rolls payment forms indicated that no OLI or PRBLI deductions would be withheld from the employee's wage-loss compensation. The record includes several fiscal reports, which note compensation payment data. A form dated August 7, 1990 indicated that, during the period June 16 to July 18, 1990, life insurance deductions were made from the employee's wage-loss compensation. Forms dated September 13, 1990 and January 26, 1991 indicated that, during the period September 23 to October 20, 1990 and from January 13 to February 9, 1991 OLI premiums would be deducted. A March 6, 1991 case history inquiry report indicated that, during the period January 28 to

September 22, 1990, no OLI or PRBLI deductions were made from the employee's wage-loss compensation. A disability benefit payment worksheet dated March 20, 1991 indicated that an overpayment had occurred during the period January 28 through September 22, 1990 as no OLI premiums had been deducted. A May 18, 1992 preliminary overpayment determination indicated that the employee received an overpayment of compensation in the amount of \$285.94 because OLI premiums were not deducted from his compensation payments during the period January 28 to September 22, 1990. By decision dated July 10, 1992, OWCP waived the employee's overpayment, finding that it would defeat the purpose of FECA by causing severe hardship.

In a letter dated October 13, 1998, OWCP advised that it had been deducting premiums from the employee's wage-loss compensation since January 28, 1990 for option A, option B-3 times his pay, and option C-family, pursuant to an election form the employee completed on March 23, 1981.

OWCP granted the employee a schedule award on April 10, 2000 for 33 percent permanent impairment of his right arm, 33 percent permanent impairment of his left arm, 41 percent permanent impairment of his right leg, and 41 percent permanent impairment of his left leg. A daily computation form dated April 1, 2000 indicated that, during the period March 26 to April 22, 2000, an OLI deduction was made, but no PRBLI deduction. A verification inquiry report dated January 30, 2001, indicated that OLI deduction was made during the period January 28 to February 24, 2001. The record documents the employee's receipt of schedule award benefits on the periodic rolls as of June 16, 2002 and wage-loss compensation on the periodic rolls as of September 28, 2008. These records indicate that, as of June 16, 2002, OLI premiums were deducted from his wage-loss compensation; however, no PRBLI deductions were made.

On August 25, 2019 the employee passed away. On August 26, 2019 his compensation was terminated.

In an October 7, 2019 letter, the Office of Personnel Management (OPM) indicated that on April 14, 1990 the employee elected to have no reductions in PRBLI; however, no deductions were taken from his compensation payments. It requested that OWCP make adjustments as necessary and indicated that his final salary was \$38,855.00. OPM attached a FEGLI agency certification of life insurance form signed by the employee on May 2, 1990 authorizing no reduction in his BLI premiums deductions after age 65. The form was updated on January 1, 2010 to indicate that Option B was frozen.

OPM also attached a June 7, 1991 OPM Civil Service Retirement System form signed by the employee indicating that he elected no reduction in his PRBLI premiums of \$85.73, which commenced on April 14, 1990. The employee additionally elected to continue his standard OLI premiums of \$2.82, his additional OLI premiums worth three times his annual basic pay of \$32.99, and his family OLI premiums of 50 cents.

A November 15, 2019 OWCP worksheet indicated that from April 14, 1990 to August 26, 2019 OWCP made no deductions for the employee's PRBLI and calculated that a deduction of a \$20,048.20 had been made for OLI based on an annual salary of \$37,510.20.

A November 19, 2019 OWCP manual adjustment form calculated that it had deducted \$20,048.20 for OLI, but should have deducted \$41,914.95 in OLI premiums and \$29,670.00 in

PRBLI premiums. It calculated that the employee was therefore overpaid in the amount of \$51,537.14.

On November 19, 2019 OWCP advised appellant of its preliminary overpayment determination that the employee had received an overpayment of compensation in the amount of \$51,537.14 because it did not deduct PRBLI premiums from the employee's FECA compensation for the period April 14, 1990 to August 26, 2019 and because it under deducted the employee's life insurance premiums based on the annual salary of \$37,500.00 rather than \$38,855.00. It provided overpayment calculations, which stated that the overpayment occurred from August 1, 2017 to August 17, 2019 and included FEGLI and OLI overpayment calculations to reach the \$51,537.14 total overpayment. OWCP also found that the employee was without fault in the creation of the overpayment because he relied on misinformation given in writing by OWCP or another government agency that he had reason to believe was connected with the administration of FECA benefits. It forwarded an overpayment action request and an overpayment recovery questionnaire (Form OWCP-20) and afforded appellant 30 days to respond.

By decision dated January 8, 2020, addressed to the employee's estate, OWCP finalized its preliminary overpayment determination, finding that the employee had received an overpayment of compensation for which he was not at fault, in the amount of \$51,537.14 for the period April 14, 1990 to August 26, 2019 because it did not deduct PRBLI premiums from his FECA compensation and under deducted the employee's life insurance premiums. It denied waiver of recovery of the overpayment as no financial information establishing income or expenses was submitted. OWCP directed repayment of the overpayment in full within 30 days of the date its decision.

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.⁴ 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.⁵

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁶ The coverage for BLI is effective unless waived⁷ and premiums for basic and optional life coverage are withheld from the employee's pay.⁸ 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

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

or compensation payments.⁹ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁰ however, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.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. 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 2 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 1 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

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.¹³ 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.¹⁴

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.¹⁵

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹⁶

⁹ *Id.* at § 8706.

¹⁰ *Id.* at § 8707(b)(2).

¹¹ *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).

¹² 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).

¹³ 5 C.F.R. § 870.504(a)(1).

¹⁴ *Id.* at § 870.504(b).

¹⁵ 5 U.S.C. § 8707(d); see also *D.H.*, *supra* note 12; *S.P.*, *supra* note 12; *Keith H. Mapes*, 56 ECAB 130 (2004).

¹⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

Thus, it 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).¹⁷ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,¹⁸ including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

On November 19, 2019 OWCP advised appellant of its preliminary overpayment determination that the employee had received an overpayment of compensation in the amount of \$51,537.14 because it did not deduct PRBLI premiums from the employee's FECA compensation for the period April 14, 1990 to August 26, 2019 and because it under deducted the employee's life insurance premiums based on the annual salary of \$37,500.00 rather than \$38,855.00. OWCP's procedures provide for recovery from a deceased debtor's estate.²⁰ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.²¹ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,²² including sending the complete referral package to the national office for final review and forwarding to the FMS.²³

The evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. Although OWCP has demanded repayment of the overpayment in full, the Board cannot make an informed decision regarding the amount of overpayment to be collected against the estate.²⁴ The case shall therefore be remanded to for OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedures.²⁵ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁷ 31 C.F.R. § 285.2; *Id.* at Chapter 6.500.15(g)(1)-(7) (September 2018). *See also* *R.B. (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

¹⁸ *Supra* note 16 at Chapter 6.500.12 (September 2018).

¹⁹ *Supra* note 16 at Chapter 6.500.15(e).

²⁰ *Supra* note 16.

²¹ *Supra* note 17.

²² *Supra* note 18.

²³ *Supra* note 19.

²⁴ *See R.B. (J.B.)* and *W.J. (E.J.)*, *supra* note 17.

²⁵ *Supra* note 16.

CONCLUSION

The Board finds that this case is not in posture for decision.²⁶

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 4, 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

²⁶ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.