



appellant received an overpayment of compensation in the amount of \$13,926.71 because postretirement basic life insurance (PRBLI) premiums were not properly deducted from his compensation benefits for the period November 25, 1995 through January 7, 2017, for which he was without fault; (3) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment; and (4) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

### **FACTUAL HISTORY**

On February 24, 1988 appellant, then a 36-year-old industrial specialist, filed a traumatic injury claim (Form CA-1) alleging that he was injured on February 23, 1988 when attempting to subdue an intruder in the workplace while in the performance of duty. OWCP accepted that he sustained a contusion and sprain of the right finger, laceration of the right thigh, post-traumatic stress disorder, and major depression with psychosis. Appellant stopped work shortly after his February 23, 1988 injury and returned to full-duty work on April 13, 1992. On October 23, 1992 the employing establishment reduced the hours of his job as an industrial specialist to 32 hours per week per an attending physician's recommendation. By decision dated February 17, 1993, OWCP determined that appellant's part-time work as an industrial specialist fairly and reasonably represented his wage-earning capacity.

On October 12, 2016 OWCP received documentation from the Office of Personnel Management (OPM) which established that on June 15, 1995 appellant elected PRBLI coverage at a 50 percent reduction. Those premium deductions commenced on November 25, 1995.<sup>3</sup>

On December 15, 2016 appellant notified OWCP by telephone that his life insurance premiums had not been deducted from his FECA compensation.

During a January 5, 2017 telephone call, an OWCP official advised appellant that PRBLI premiums would be deducted from his FECA compensation commencing January 8, 2017. The official informed appellant that there would be an overpayment of compensation.<sup>4</sup> OWCP subsequently adjusted appellant's FECA compensation to reinstate his PRBLI deductions commencing January 8, 2017.

By decision dated June 15, 2017, OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$13,926.71 for the period November 25, 1995 through January 7, 2017 because PRBLI premiums were not properly deducted from his compensation benefits for this period. It also made a preliminary determination that he was without fault in the creation of the overpayment. OWCP advised appellant of his right to request a telephone conference, a final decision based on the written evidence, or a

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<sup>3</sup> On September 20, 2016 appellant changed his PRBLI coverage election to Option B (3x -- no reduction). The change was to commence on November 1, 2016.

<sup>4</sup> On May 15, 2017 OWCP added computerized overpayment calculation documents to the case record.

prerecoupment hearing, and requested that he complete and submit an overpayment recovery questionnaire form (Form OWCP-20) regarding his finances. It afforded him 30 days to respond.<sup>5</sup>

On June 16, 2017 appellant requested waiver of recovery of the overpayment and completed a Form OWCP-20.

On October 2, 2017 OWCP informed appellant that federal regulations required him to execute an affidavit relative to any earnings or employment during the previous year and that a Form CA-1032 was enclosed for that purpose. It notified him that he must fully answer all questions on the enclosed Form CA-1032 and return it within 30 days or his benefits would be suspended. The letter was sent to appellant's address of record. No response was received.

By decision dated November 30, 2017, OWCP suspended appellant's compensation benefits, effective January 7, 2018, due to his failure to submit the Form CA-1032, as requested. It noted that, if he completed and returned an enclosed copy of the Form CA-1032, his compensation benefits would be restored retroactively to the date they were suspended.

By decision dated January 26, 2018, OWCP finalized its June 15, 2017 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$13,926.71 because PRBLI premiums were not properly deducted from his compensation benefits for the period November 25, 1995 through January 7, 2017. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because his monthly income exceeded his monthly expenses by more than \$50.00. OWCP required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>6</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>7</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that

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<sup>5</sup> On October 19, 2017 OWCP also made a preliminary determination that appellant received an overpayment of compensation in the amount of \$577.07 due to nondeduction of premiums for Option B (3x -- no reduction) life insurance for the period October 16, 2016 through January 7, 2017. Appellant repaid the \$577.07 to OWCP on November 15, 2017. Therefore, that overpayment was not addressed in the January 26, 2018 final overpayment determination and that matter is not currently before the Board.

<sup>6</sup> 5 U.S.C. § 8106(b).

<sup>7</sup> 20 C.F.R. § 10.528.

time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has met its burden of proof to suspend appellant's compensation for failing to submit a Form CA-1032, as requested.

On October 2, 2017 OWCP provided appellant with a Form CA-1032 and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was properly sent to appellant's address of record and there is no indication that it was returned as undeliverable.<sup>9</sup>

The record shows no response prior to the November 30, 2017 OWCP decision suspending appellant's benefits. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective January 7, 2018, pursuant to 20 C.F.R. § 10.528.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and one or more forms optional life insurance (OLI).<sup>11</sup> The coverage for BLI is effective unless waived,<sup>12</sup> and premiums for BLI coverage are withheld from the employee's pay.<sup>13</sup> 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.<sup>14</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before

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<sup>8</sup> *Id.*; *see also id.* at § 10.525.

<sup>9</sup> *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015) (Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee).

<sup>10</sup> *See M.W.*, Docket No. 15-0507 (issued June 18, 2015); *see also James A. Igo*, 49 ECAB 189 (1997).

<sup>11</sup> *Supra* note 1 at § 8702(a).

<sup>12</sup> *Id.* at § 8702(b).

<sup>13</sup> *Id.* at § 8707.

<sup>14</sup> *Id.* at § 8706.

December 31, 1989,<sup>15</sup> however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.<sup>16</sup>

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 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).<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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 duty.<sup>21</sup> 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.<sup>22</sup>

OWCP's procedures provide that, once an overpayment is identified, it is responsible for determining whether the claimant was with fault or without fault, issuing a preliminary finding,

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<sup>15</sup> *Id.* at § 8707(b)(2).

<sup>16</sup> *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>17</sup> *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>18</sup> 5 C.F.R. § 870.504(a)(1).

<sup>19</sup> *Id.* at § 870.504(b).

<sup>20</sup> *Supra* note 1 at § 8707(d); *see also B.B.*, *supra* note 16.

<sup>21</sup> *Id.* at § 8102(a).

<sup>22</sup> *Id.* at § 8129(a).

and unless a hearing is requested, OWCP is responsible for issuing a final decision.<sup>23</sup> These procedures note that, if the claimant is determined to be without fault, a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified. Both the reason that the overpayment occurred and the reason for the finding of without fault must be clearly stated. A preliminary overpayment determination informs the claimant of the right to submit evidence and the right to a precoupment hearing on the issues of: (a) fact and amount of overpayment; and (b) waiver of recovery of the overpayment. Along with the preliminary overpayment determination, OWCP should provide a clearly written statement explaining how the overpayment was created.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

As noted, 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.<sup>25</sup> In telephone call January 5, 2017, an OWCP official advised appellant that PRBLI premiums would be deducted from his FECA compensation commencing January 8, 2017. As such, an overpayment of compensation was identified in connection with OWCP's failure to deduct life insurance premiums from appellant's compensation benefits. It was not until June 15, 2017, however, that OWCP issued a preliminary determination, finding an overpayment in the amount of \$13,926.71 had been created for the period November 25, 1995 through January 7, 2017. By decision dated January 26, 2018, OWCP finalized the preliminary overpayment determination. It found that appellant was without fault in the creation of the \$13,926.71 overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

The Board finds that OWCP failed to follow its procedures in issuing the January 26, 2018 overpayment decision. As noted, OWCP's procedures provided that a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified.<sup>26</sup> In this case, it first identified the overpayment of compensation on January 5, 2017, but it did not, however, issue a preliminary notice regarding the overpayment until June 15, 2017, more than 30 days later.

The Board thus finds that OWCP failed to follow its established procedures in determining that appellant received an overpayment of compensation in the amount of \$13,926.71 for the period November 25, 1995 through January 7, 2017.<sup>27</sup>

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<sup>23</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(2) (May 2004).

<sup>24</sup> *Id.*; see also *L.P.*, Docket No. 18-0095 (issued March 12, 2020).

<sup>25</sup> See *supra* note 16.

<sup>26</sup> See *supra* note 20.

<sup>27</sup> In light of the Board's disposition of Issue 2, Issues 3 and 4 are rendered moot.

**CONCLUSION**

The Board finds that OWCP properly suspended appellant's compensation benefits for failure to submit a Form CA-1032, as requested. The Board also finds that OWCP improperly determined that he received an overpayment of compensation in the amount of \$13,926.71 for the period November 25, 1995 through January 7, 2017.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

**IT IS FURTHER ORDERED THAT** the January 26, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 24, 2021  
Washington, DC

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

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

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