

overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On October 14, 2010 appellant, then a 58-year-old boiler plant equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 28, 2010 he injured his back and lost feeling from the waist down after moving tanks while in the performance of duty. OWCP accepted appellant's claim for displacement of lumbar intervertebral disc without myelopathy, and thoracic or lumbosacral neuritis/radiculitis. Appellant stopped work on January 19, 2011, and OWCP paid him wage-loss compensation benefits on the supplemental and periodic rolls commencing January 19, 2011.

In a payment memorandum dated October 4, 2011, OWCP indicated that appellant elected basic life insurance (BLI) and optional life insurance (OLI) under code N5. A Notification of Personnel Action form (Standard Form 50-B) indicates that appellant was removed from the employing establishment effective July 20, 2012 and also notes that he had elected BLI and OLI in the form of Option A, Option B (2x), and Option C (5x) under code N5. In a Continuation of Life Insurance Coverage form, signed on December 28, 2012, appellant elected to continue BLI coverage in "retirement/compensation" with no reduction.

In a September 22, 2016 letter, OWCP informed appellant that he had the option of continuing his Option B and Option C life insurance beyond age 65 as a "Post-65 Reduction Election." It requested that appellant complete an attached form and submit it to the Office of Personnel Management (OPM) if he was interested in continuing his OLI coverage.

On December 2, 2016 OWCP received a November 6, 2016 letter in which OPM advised that, as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage for BLI with no reduction and OLI in the form of Option A, Option B (2x – no reduction), and Option C (5x -- no reduction). It further advised that appellant's postretirement election was "no reduction" and requested that OWCP make deductions (under code N5) for the delineated BLI and OLI effective the "commencing date" of January 20, 2012. In its November 17, 2016 letter, OPM also requested that, effective January 1, 2017, OWCP freeze appellant's OLI coverage in the form of Option B (2x -- no reduction) and Option C (5x -- no reduction) at its value as of age 65. On December 2, 2016 OWCP also received election forms, signed on November 8, 2016, in which appellant requested such a freeze of these types of OLI.

On May 17, 2017 OWCP payment records showed the nondeduction of postretirement life insurance premiums from January 20, 2012 through April 29, 2017 and worksheets explaining the calculation of the overpayment amount were added to the case record. On May 23, 2017 an OWCP payment record indicating that postretirement life insurance premiums were being deducted from compensation commencing April 30, 2017 was also added to the case record.

In a May 26, 2017 letter, OWCP advised appellant of its preliminary determination that he received an overpayment of compensation in the amount of \$7,094.17 for the period January 20, 2012 through April 29, 2017 because postretirement life insurance premiums were not properly deducted from his compensation benefits for this period. It also made a preliminary determination that appellant was without fault in the creation of the overpayment. OWCP advised appellant of

his right to request a telephone conference with the district office, a final decision based on the written evidence, or a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review, and requested that he complete and submit an overpayment recovery questionnaire form (OWCP Form-20) regarding his finances. OWCP afforded him 30 days to respond.

On June 12, 2017 appellant requested a prerecoupment hearing and, on June 20, 2017, OWCP received an OWCP Form-20 which he had completed on June 16, 2017. During the prerecoupment hearing held on November 16, 2017, he testified that he had not been aware that postretirement life insurance premiums had to be deducted commencing January 20, 2012. Appellant provided additional information about his monthly income and expenses. In a November 20, 2017 letter, he further discussed his financial circumstances.

By decision dated January 31, 2018, OWCP's hearing representative finalized the preliminary determination that appellant had received an overpayment of compensation in the amount of \$7,094.17 for the period January 20, 2012 through April 29, 2017 because postretirement life insurance premiums were not properly deducted from his compensation benefits for this period. She further found appellant 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. The hearing representative required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Under the FEGLI Program, most civilian employees of the federal government are eligible to participate in BLI and one or more forms of OLI.² The coverage for BLI is effective unless waived,³ and premiums for BLI coverage are withheld from the employee's pay.⁴ Upon retirement or upon separation from the employing establishment or being placed on the 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.⁵ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,⁶ but the employee is

² *Supra* note 1 at § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

⁵ *Id.* at § 8706.

⁶ *Id.* at § 8707(b)(2).

responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.⁷

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).⁸

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.⁹ 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.¹⁰ 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.¹¹

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.¹² 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.¹³

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,

⁷ *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).

⁸ See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁹ 5 C.F.R. § 870.504(a)(1).

¹⁰ *Id.* at § 870.504(b).

¹¹ *Supra* note 1 at § 8707(d); see also *B.B.*, *supra* note 7.

¹² *Supra* note 1 at § 8102(a).

¹³ *Id.* at § 8129(a).

and unless a hearing is requested, OWCP is responsible for issuing a final decision.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant received an overpayment in the amount of \$7,094.17 for the period January 20, 2012 through April 29, 2017.

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.¹⁶ On December 2, 2016 an overpayment of compensation was identified in connection with OWCP's failure to deduct postretirement life insurance premiums from appellant's compensation benefits commencing effective January 20, 2012. On December 2, 2016 OWCP had received a document from OPM advising it that premium deductions for life insurance, including postretirement life insurance, needed to be made commencing effective January 20, 2012.¹⁷ It was not until May 26, 2017, however, that OWCP issued a preliminary determination finding an overpayment in the amount of \$7,094.17 had been created for the period January 20, 2012 through April 29, 2017, *i.e.*, the period of nondeduction of postretirement life insurance. By decision dated January 31, 2018, OWCP's hearing representative finalized the preliminary overpayment determination and found appellant without fault in the creation of the \$7,094.17 overpayment, but denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

The Board finds that OWCP failed to follow its procedures in issuing the January 31, 2018 overpayment decision. As noted, OWCP's procedures provide that a preliminary overpayment determination must be released along with a Form OWCP-20 within 30 days of the date the overpayment is identified.¹⁸ In this case, OWCP first identified the overpayment of compensation

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(a)(2) (May 2004).

¹⁵ *Id.*; see also *L.P.*, Docket No. 18-0095 (issued March 12, 2020).

¹⁶ See *supra* note 13.

¹⁷ See generally *P.D.*, Docket No. 18-0557 (issued January 22, 2020); *J.N.*, Docket No. 17-1890 (issued November 26, 2019); *M.L.*, Docket No. 19-0035 (issued November 4, 2019).

¹⁸ See *supra* note 15.

on December 2, 2016, but it did not, however, issue a preliminary notice regarding the overpayment until May 26, 2017, *i.e.*, 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 \$7,094.17 for the period January 20, 2012 through April 29, 2017.¹⁹

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$7,094.17 for the period January 20, 2012 through April 29, 2017.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 23, 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

¹⁹ Based on the Board's disposition of whether an overpayment of compensation was created, the issues of waiver and recovery are moot.