

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

R.B., Appellant son of J.B. and DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICE, CARL ALBERT INDIAN HOSPITAL, Ada, OK, Employer))))))))))))	Docket No. 19-0700 Issued: March 16, 2021
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 CHRISTOPHER J. GODFREY, Deputy Chief Judge
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 15, 2019 appellant filed a timely appeal from a December 4, 2018 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 4, 2018 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 additional 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 she was not at fault in the amount of \$13,118.79 during the period October 5, 1987 through June 23, 2018 because post-retirement basic life insurance (PRBLI) premiums were not properly deducted from her FECA wage-loss compensation; and (2) whether OWCP properly denied appellant's request for waiver of recovery of the overpayment.

FACTUAL HISTORY

On May 14, 1982 the employee, then a 49-year-old respiratory therapist, filed an occupational disease claim alleging that her preexisting systemic lupus erythematosus was aggravated by factors of her federal employment.³ OWCP accepted aggravation of systemic lupus erythematosus. The employee worked intermittently until December 20, 1985. OWCP thereafter paid the employee on the periodic compensation rolls.

Appellant underwent an authorized liver transplant on January 4, 1999. OWCP subsequently expanded its acceptance of the claim to include aggravation of cholangitis, aggravation of spinal stenosis (lumbar region), osteoporosis, irritable bowel syndrome, hypertension, and long-term use of steroids. On June 13, 2001 she underwent authorized lumbar decompression surgery.

The employee continued to receive wage-loss compensation and medical benefits for her accepted conditions.

On June 29, 2018 appellant, the employee's son, notified OWCP that the employee had passed away on June 27, 2018 and OWCP provided a form for his completion regarding the employee's death. On July 16, 2018 OWCP received the completed form, signed and dated by appellant on July 11, 2018. Appellant identified himself as the administrator or executor of the employee's estate and named the beneficiaries. A copy of the employee's death certificate was attached.

OWCP subsequently received a PRBLI election form signed by the employee on November 25, 1985 indicating her selection of PRBLI at "no reduction." The form also indicates that the employee selected life insurance options A and B. The record includes undated correspondence from the Office of Personnel Management (OPM) confirming this selection.

On August 2, 2018 OWCP calculated the amount of appellant's life insurance premiums that should have been deducted for the period October 5, 1987 through June 23, 2018. It attached the employee's compensation payment history from February 24, 1985 through June 23, 2018, which showed no deductions made for PRBLI during that period.

³ OWCP assigned File No. xxxxxx611 to the present claim. The employee also has a claim filed on December 14, 1983, assigned File No. xxxxxx911. OWCP administratively combined the two files on July 24, 1986, with File No. xxxxxx611 serving as the master file.

On October 15, 2018 OWCP advised the employee's estate of its preliminary determination that an overpayment of compensation in the amount of \$13,118.79 had been created for the period October 5, 1987 through June 23, 2018 because it had not adjusted the employee's wage-loss compensation to reflect PRBLI at no reduction. It explained the calculation of the overpayment and found the employee not at fault in the creation of the overpayment. OWCP advised appellant that he could request a prerecoumpment hearing before a representative of OWCP's Branch of Hearings and Review, or a final decision based on the written evidence. It attached an overpayment action request, an overpayment recovery questionnaire (Form OWCP-20), OPM's correspondence, calculation worksheets, and documents showing the employee's compensation history.

In a November 6, 2018 response, appellant asserted that the employee was not aware of an overpayment during her lifetime and requested waiver of recovery of the overpayment. He maintained that repayment would cause undue financial hardship to the estate. Appellant forwarded a completed Form OWCP-20, indicating that the employee had monthly income of \$2,178.00 from OWCP and \$1,400.00 in Social Security Administration (SSA) benefits for a total income of \$3,578.00. He listed monthly expenses of \$6,701.50 for the employee's nursing home fee and noted that at the time of her death she had \$8,141.39 in a checking account. He submitted a bank statement that showed a direct deposit of \$2,178.90 from the Treasury Department on May 25, 2018 and a \$1,400.00 direct deposit from SSA on June 1, 2018. Automatic debits for nursing home fees were \$5,257.76 on May 24, 2018 and \$6,701.50 on June 13, 2018. Debits for medical treatment dated May 22, June 5 and 20, 2018 totaled \$164.60. It also showed a miscellaneous debit of \$30.04 for cable. The bank statement showed a balance of \$8,141.39 on June 5, 2018.

By decision dated December 4, 2018, OWCP finalized its determination that an overpayment of compensation in the amount of \$13,118.79 was created because no deductions were made for PRBLI for the period October 5, 1987 through June 23, 2018. It explained its calculations and found the employee not at fault, but denied waiver of recovery of the overpayment. OWCP indicated that the overpayment could not be waived because there was no evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. The decision was addressed to the estate of the employee.

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 Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8129(a).

one or more of the options.⁶ The coverage for BLI is effective unless waived,⁷ 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 optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁹

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 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).¹⁰

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.¹¹ 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.¹²

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.¹³

ANALYSIS -- ISSUE 1

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

⁶ *Id.* at § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8706.

¹⁰ *See D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹¹ 20 C.F.R. § 870.504(a)(1).

¹² *Id.* at § 870.504(b).

¹³ 5 U.S.C. § 8707(d); *see also D.R.*, (*G.R.*), Docket No. 19-1675 (issued October 8, 2020); *D.H.*, *supra* note 10.

OWCP's preliminary determination notified the employee's estate that the employee had received an overpayment of compensation in the amount of \$13,118.79. OWCP's procedures in effect at the time of OWCP's December 4, 2018 decision, provide for recovery from a deceased debtor's estate.¹⁴ The procedures specifically require that, if the claimant recently passed away, OWCP 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).¹⁵ 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 6.500.12,¹⁶ including sending the complete referral package to the National Office for final review and forwarding to the FMS.¹⁷

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. It did not refer the debt to FMS for offset of the deceased employee's last federal tax refund under the TOP. 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.¹⁸ The case shall therefore be remanded to OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedure manual. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

For these reasons, the Board finds that OWCP improperly determined that the employee received an overpayment of compensation for which she was not at fault in the amount of \$13,118.79 during the period October 5, 1987 through June 23, 2018.

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁹

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

¹⁵ 31 C.F.R. § 285.2; Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15(g)(1)-(7) (September 2018); *see also* *W.J.*, Docket No. 18-1035 (issued July 9, 2019).

¹⁶ *Id.* at Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.12 (September 2018).

¹⁷ *Id.*

¹⁸ *See W.J.*, Docket No. 18-1035 (issued July 9, 2019).

¹⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the decision dated December 4, 2018 is set aside and this case is remanded for further proceedings consistent with this decision of the Board.²⁰

Issued: March 16, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ Christopher J. Godfrey, Deputy Chief Judge, was no longer a member of the Board after January 20, 2021.