



## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$3,359.33 for the period February 9, 2011 through January 5, 2019, for which he was not at fault, because of an under withholding of life insurance premiums; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On November 10, 2005 appellant, then a 38-year-old registered respiratory therapist, filed an occupational disease claim (Form CA-2) alleging that he developed stress, depression, and anxiety causally related to factors of his federal employment. OWCP accepted the claim for an aggravation of adjustment reaction with disturbance of anxiety. It initially paid appellant wage-loss compensation benefits on the supplemental rolls and then on the periodic rolls as of May 14, 2006. Appellant returned to part-time work on November 23, 2009. OWCP subsequently resumed payment of wage-loss benefits for temporary total disability on the periodic rolls beginning June 1, 2010.

In a letter dated June 4, 2010, OWCP notified appellant that it was placing him on the periodic compensation rolls, effective August 17, 2005. It advised him that it was making deductions for health insurance benefits, basic life insurance (BLI), and optional life insurance (OLI) premiums from his compensation payments. OWCP requested that appellant notify it immediately if he had benefits such as OLI that it was not deducting from his wage-loss compensation.

On April 20, 2017 the Office of Personnel Management (OPM) informed OWCP that as a compensationner appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic, postretirement basic life insurance (PRBLI), and OLI coverage. The final base salary on which FEGLI was based was \$54,000.00. OPM requested OWCP to deduct for BLI, and OLI, option B no reduction with 5 multiples and option C no reduction with 5. PRBLI was 50 percent reduction. OWCP was subsequently informed that appellant's PRBLI at 50 percent reduction commenced on August 21, 2006 and his base salary was \$45,371.00.

In a preliminary overpayment determination dated August 11, 2017, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$5,483.58 because PRBLI and BLI premiums had not been properly deducted from his FECA compensation for the period August 21, 2006 through June 24, 2017. It further advised him of its preliminary determination that he was not at fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, OWCP notified appellant that within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On September 1, 2017 appellant requested a prerecoupment hearing by telephone.

By decision dated December 21, 2017, OWCP's hearing representative set aside the August 11, 2017 preliminary overpayment determination and remanded the case for further development. On remand OWCP was to instruct OPM to properly assess whether an adjustment should be made relative to appellant's PRBLI reduction. It also requested clarification as to whether any adjustments needed to be made based upon changes to appellant's base salary for life insurance purposes.

In a January 16, 2019 letter, OPM again informed OWCP that appellant, as a compensationner, was eligible to continue coverage under the FEGLI Program. It indicated that the final base salary on which FEGLI was based was \$50,657.00. OPM requested OWCP to deduct premiums for Code Z5, which included BLI at 50 percent and OLI, Option A Standard, and Option B and Option C no reduction with 5 multiples. The PRBLI was at 50 percent reduction commencing February 9, 2011. OPM provided a form completed by appellant on September 3, 2015 indicating that he wanted to continue FEGLI in retirement with 50 percent reduction for PRBLI and no reduction in BLI, Option B or Option C.

In a preliminary overpayment determination dated January 23, 2019, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$3,359.33 because it had failed to properly deduct BLI, OLI, and PRBLI premiums from his FECA compensation payments for the period February 9, 2011 through January 5, 2019. It further notified him of its preliminary overpayment determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and Form OWCP-20, and submit supporting financial documentation. Additionally, OWCP notified appellant that he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP allotted 30 days for appellant to respond. No response was received.

OWCP provided compensation payment records for the period February 9, 2011 through January 5, 2019, as well as an overpayment worksheet explaining the \$3,359.33 overpayment. It provided calculations showing shortfalls in deductions for the period February 9, 2011 through January 5, 2019. The worksheet shows that these shortages for the stated period occurred because of an underwithholding of life insurance premiums. The total of these deduction shortages is \$3,359.33.

OWCP, by decision dated February 26, 2019, finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$3,359.33 for the period February 9, 2011 through January 5, 2019, as it failed to deduct BLI, OLI, and PRBLI premiums from his compensation payments. It denied waiver of recovery of the overpayment as no financial evidence had been submitted in response to the preliminary overpayment determination, as requested. OWCP directed recovery of the overpayment by deducting \$680.36 every 28 days from appellant's continuing compensation payments.

On February 27, 2019 appellant, through counsel, faxed an overpayment action request form dated February 20, 2019 to OWCP. He disagreed that an overpayment occurred, disagreed with the amount of the overpayment, and requested waiver of the overpayment. Counsel did not submit an overpayment recovery questionnaire.

By decision dated April 12, 2019, OWCP denied appellant's request for a prerecoupment hearing as untimely filed pursuant to 5 U.S.C. § 8124(b). It informed him that, as his request was

not made within 30 days of the January 23, 2019 decision, he was not, as a matter of right, entitled to a prerecoumment hearing.

On April 25, 2019 counsel contended that appellant had filed a timely request for a prerecoumment hearing on February 14, 2019. He submitted a copy of appellant's overpayment action request form which indicated that it was faxed to OWCP on February 14, 2019.

During a telephonic prerecoumment hearing held on July 26, 2019, appellant testified that he had not yet retired from the employing establishment.

By decision dated October 9, 2019, an OWCP hearing representative set aside the January 23, 2019 preliminary overpayment determination and remanded the case for further development. He instructed OWCP to obtain information from the employing establishment as to when, if ever, appellant had separated from federal employment. The hearing representative determined that this information was necessary for determination of the amount of the declared overpayment of compensation. He explained that a March 1, 2016 notification of personnel action (Standard Form (SF)-50) did not show that appellant had separated or retired from federal employment, and thus, the period of the overpayment could not go back to 2011. The hearing representative further explained that neither OWCP nor OPM explained why he would be required to pay PRBLI premiums if he had not separated or retired from employment.

In an October 31, 2019 decision, an OWCP hearing representative vacated the October 9, 2019 decision and finalized OWCP's January 23, 2019 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$3,359.33 for the period February 9, 2011 through January 5, 2019 because it did not make proper deductions for BLI, OLI, and PRBLI premiums from his FECA compensation payments. She explained that the evidence of record was sufficient to establish that an overpayment had occurred. The hearing representative denied waiver of recovery of the overpayment as appellant had provided no financial documentation regarding his household income and assets. She required recovery of the overpayment by deducting \$250.00 every 28 days from his continuing compensation payments.

### **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 of the options.<sup>4</sup> The coverage for BLI is effective unless waived,<sup>5</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>6</sup> 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.<sup>7</sup> BLI coverage shall be continued without cost to

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<sup>4</sup> 5 U.S.C. § 8702(a).

<sup>5</sup> *Id.* at § 8702(b).

<sup>6</sup> *Id.* at § 8707.

<sup>7</sup> *Id.* at § 8706.

an employee who retired or began receiving compensation on or before December 31, 1989;<sup>8</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>9</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 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).<sup>10</sup> 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.<sup>11</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>12</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>13</sup>

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

The Board finds that appellant received an overpayment of compensation in the amount of \$3,359.33 for the period February 9, 2011 through January 5, 2019, for which he was not at fault, because OWCP because of an underwithholding of life insurance premiums from his FECA compensation.

OPM notified OWCP that appellant had elected PRBLI, BLI, and OLI coverage effective February 9, 2011. OWCP, however, did not deduct the proper amounts of premiums for PRBLI, BLI, and OLI from appellant's wage-loss compensation benefits for the period February 9, 2011 through January 5, 2019. It calculated the amount of the resulting overpayment as \$3,359.33. The record contains compensation payment records, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at

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<sup>8</sup> *Id.* at § 8707(b)(2).

<sup>9</sup> *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

<sup>10</sup> *See I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>11</sup> 5 U.S.C. § 8707(d); *see also B.B.*, *supra* note 9.

<sup>12</sup> *Id.* at § 8102(a).

<sup>13</sup> *Id.* at § 8129(a).

whatever option he or she had selected.<sup>14</sup> Moreover, as noted, 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.<sup>15</sup>

The Board thus finds that OWCP properly calculated the amount of the overpayment. As OWCP failed to properly deduct PRBLI, BLI, and OLI premiums for the period February 9, 2011 to January 5, 2019, appellant received an overpayment of compensation of \$3,359.33 during this period.<sup>16</sup>

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

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup>

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>18</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>19</sup>

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>20</sup> Failure to submit the requested information

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<sup>14</sup> 5 C.F.R. § 870.504(b); *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

<sup>15</sup> 5 U.S.C. § 8102.

<sup>16</sup> *See I.J.*, *supra* note 10; *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

<sup>17</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

<sup>18</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

<sup>19</sup> *Id.* at § 10.437(a)(b).

<sup>20</sup> *Id.* at § 10.438(a).

within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>21</sup>

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

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.<sup>22</sup> As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>23</sup> Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>24</sup>

In its preliminary overpayment determination dated January 23, 2019, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not respond. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>25</sup>

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>26</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account

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<sup>21</sup> *Id.* at § 10.438(b).

<sup>22</sup> *See George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

<sup>23</sup> 20 C.F.R. § 10.436.

<sup>24</sup> *Id.* at § 10.438; *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>25</sup> *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

<sup>26</sup> *Id.*

the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>27</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments, every 28 days.

OWCP provided a Form OWCP-20 to appellant with the January 23, 2019 preliminary overpayment determination. Appellant did not complete the form or provide the necessary financial information to support his income and expenses prior to the final October 31, 2019 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.<sup>28</sup>

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$3,359.33 overpayment at the rate of \$250.00 every 28 days from his continuing compensation payments.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$3,359.33 for the period February 9, 2011 through January 5, 2019 because of an underwithholding of life insurance premiums. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required repayment of the overpayment by deducting \$250.00 from his continuing compensation payments every 28 days.

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<sup>27</sup> 20 C.F.R. § 10.441(a).

<sup>28</sup> *Id.* at § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).



**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 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