

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

)	
B.C., Appellant)	
)	
and)	Docket No. 20-0542
)	Issued: May 17, 2021
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD &)	
INTERMEDIATE MAINTENANCE FACILITY,)	
Bremerton, WA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 ALEC J. KOROMILAS, Chief Judge
 PATRICIA H. FITZGERALD, Alternate Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a November 26, 2019 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.

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$2,385.48 for the period May 27, 2018 through March 2, 2019 for which she was without fault, because health and life insurance premiums had not been deducted from her FECA compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 14, 2017 appellant, then a 25-year-old dispatcher, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2017 she sustained left wrist injuries when the blade of a saw kicked back, causing her left wrist to strike a metal surface in the performance of duty. OWCP accepted the claim for disorders of the left wrist synovium, palmar fascial fibromatosis, and other left wrist instability. It paid appellant wage-loss compensation on the supplemental rolls from March 30, 2017 through June 23, 2018, and then on the periodic rolls, comencing June 24, 2018. OWCP again paid her wage-loss compensation on the supplemental rolls from December 7, 2018 until January 5, 2019, and on the periodic rolls from January 6 through August 17, 2019.

The record contains a claim for compensation (Form CA-7) dated September 25, 2017, which indicated that appellant was not enrolled in basic life insurance (BLI), optional life insurance (OLI), health insurance under the Federal Employees Health Benefits (FEHB) program, or a retirement system.

Notification of Personnel Action (Standard Form (SF)-50) forms dated March 30, 2017 and March 4, 2018 indicated that appellant was a full-time seasonal employee, and that her tenure status was classified as a conditional employee, not a permanent employee. Federal Employees' Group Life Insurance (FEGLI) coverage was coded "C0" and noted as BLI only.

In a memorandum of telephone call (Form CA-110) dated March 19, 2019, OWCP noted that the employing establishment advised that appellant had enrolled in health insurance coverage, effective January 7, 2018.

On March 21, 2019 the employing establishment provided OWCP with a FEHB notice of change in health insurance enrollment (Form 2810), indicating that enrollment code 104, should have been transferred from the employing establishment to OWCP, effective May 27, 2018. It subsequently submitted a form electronically signed by appellant on January 3, 2018 noting her enrollment in FEHB plan 104 from no prior FEHB enrollment, effective January 7, 2018.

A compensation payment worksheet dated March 27, 2019 noted that the employing establishment had not notified OWCP regarding appellant's health insurance and BLI elections, which should have been deducted, effective May 27, 2018. The form further indicated that, during the period May 27, 2018 to March 2, 2019, health insurance premiums should have been deducted in the amount of \$2,259.48 and BLI premiums should have been deducted in the amount of \$126.00.

In a Health Benefits Election form dated April 28, 2019, appellant cancelled her federal health insurance plan as she elected to be covered under a state health plan.

By notice dated May 7, 2019, OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount of \$2,385.48 because health insurance and BLI premiums had not been properly deducted from her compensation payments for the period May 27, 2018 through March 2, 2019. It summarized its calculation of the overpayment relating that health insurance premiums should have been deducted in the amount of \$2,259.48 and BLI premiums should have been deducted in the amount of

\$126.00. OWCP advised appellant that she was without fault in the creation of the overpayment. It requested that she complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation within 30 days. Additionally, OWCP notified appellant that, within 30 days, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On May 16, 2019 appellant requested a telephonic precoupment hearing before a representative of OWCP's Branch of Hearings and Review and attached a Form OWCP-20 dated May 16, 2019. She reported total monthly income of \$2,072.00 in FECA wage-loss compensation, total monthly expenses of approximately \$2,890.00, and assests of \$100.00 in a checking account.

On August 5, 2019 OWCP informed appellant that a precoupment hearing was scheduled for September 13, 2019. Appellant testified that she thought the overpayment was based on OWCP's failure to make any deductions for her health insurance premiums and that she did not know that BLI deductions were improper and at issue. She further testified regarding her financial situation and current health issues.

Appellant submitted an updated Form OWCP-20 dated September 27, 2019.

By decision dated November 26, 2019, OWCP's hearing representative finalized the May 7, 2019 preliminary overpayment determination. She found that the evidence of record was sufficient to establish that an overpayment in the amount of \$2,385.48 had been created for the period May 27, 2018 through March 2, 2019 because premiums for health insurance and BLI were not deducted from appellant's FECA compensation. The hearing representative found appellant without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. She related that the overpayment was due and payable in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of 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.² Under FEHB and/or FEGLI plan, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.³ If an employee was enrolled in a FEGLI plan at the time he or she became eligible to receive wage-loss compensation, deductions for health benefits insurance and/or life insurance premiums will be withheld from the employee's compensation benefits.⁴ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations

² *Supra* note 1 at § 8102(a); *see G.C.*, Docket No. 18-1451 (issued May 5, 2020); *I.J.*, Docket No. 19-1672 (issued March 10, 2020).

³ *Supra* note 1 at § 8702(a). *See E.J.*, Docket No. 15-1734 (issued April 12, 2016).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.15 (February 2013).

prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP has established that appellant received an overpayment of compensation as premiums for health insurance and BLI were not deducted for the period May 27, 2018 through March 2, 2019 from appellant's wage-loss compensation.

The record contains a signed election form in which appellant chose plan 104 for health insurance effective January 7, 2018. The record reflects that appellant received wage-loss compensation for disability during the period May 27, 2018 through March 2, 2019, but OWCP did not deduct health insurance premiums from appellant's wage-loss compensation payments during this period.

The record also contains SF-50 forms dated March 30, 2017 and March 4, 2018, indicating that appellant elected BLI. OWCP, however, did not deduct BLI premiums from her compensation payments from May 27, 2018 through March 2, 2019. As OWCP failed to properly deduct premiums for BLI from May 27, 2018 through March 2, 2019, appellant received an overpayment of compensation.⁶ Therefore, fact of overpayment has been established as OWCP failed to deduct health insurance and BLI premiums during this time period.⁷

The Board has reviewed the March 27, 2019 overpayment fiscal worksheet that reflects the above-noted overpayment based upon OWCP's failure to deduct health insurance and BLI premiums. OWCP properly summarized its calculation of the overpayment relating that health insurance premiums should have been deducted in the amount of \$2,259.48 and BLI premiums should have been deducted in the amount of \$126.00. The Board, therefore, finds that an overpayment of compensation in the amount of \$2,385.48 was created for the time period in question.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."⁹ Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and

⁵ 20 C.F.R. §§ 10.434-10.437.

⁶ *Supra* note 1 at § 8707(d); *see also* *R.W.*, Docket No. 19-0451 (issued August 7, 2019); *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁷ *See T.M.*, Docket No. 20-1085 (issued December 31, 2020).

⁸ *R.M.*, Docket No. 19-0183 (issued November 18, 2019).

⁹ *Supra* note 1 at § 8129.

assets as specified by OWCP.¹⁰ 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. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹²

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁵ An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁶

ANALYSIS -- ISSUE 2

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

¹⁰ *Supra* note 5 at 10.438.

¹¹ *Id.*

¹² *Id.* at §§ 10.434-10.437.

¹³ *Id.* at § 10.436.

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

¹⁵ *Id.* at Chapter 6.400.4a(2).

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

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.¹⁷

In order for appellant to establish that recovery of the overpayment would defeat the purpose of FECA, she must show that she requires substantially all of her income to meet current ordinary and necessary living expenses and that her assets do not exceed the established limit as determined by OWCP's procedures.¹⁸ Appellant had the responsibility to provide the appropriate financial information to OWCP.¹⁹

In its preliminary overpayment determination dated May 7, 2019, OWCP requested that appellant provide a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses.

Appellant submitted a completed Form OWCP-20 in which she listed FECA income and a brief outline of her expenses, without any supporting financial documentation. As a result, OWCP did not have the necessary financial information to properly determine whether recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience. Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$ 2,385.48.²⁰

CONCLUSION

The Board finds that OWCP has established that appellant received an overpayment of compensation in the amount of \$2,385.48 for the period March 27, 2018 through March 2, 2019, for which she was without fault, because health and life insurance premiums had not been deducted from her FECA compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁷ *Supra* note 8.

¹⁸ *Supra* note 5 §§ 10.436, 10.437.

¹⁹ *Id.* at 10.438.

²⁰ *See E.S.*, Docket No. 20-0919 (issued February 9, 2021); *M.R.*, Docket No. 20-0427 (issued October 30, 2020); *R.Q.*, Docket No. 18-0964 (issued October 8, 2019); *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 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