

post-retirement basic life insurance (PRBLI) premiums were improperly deducted from his FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board on different issues.³ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

OWCP has accepted this claim for permanent aggravation of disc degeneration and permanent aggravation of traumatic arthropathy of the bilateral shoulders.⁴ It paid appellant wage-loss compensation and medical benefits for his accepted conditions.

On March 4, 2020 appellant informed OWCP that the employee, her father, had passed away on March 3, 2020.⁵

OWCP on December 7, 2000 received a PRBLI election form signed by the employee on June 26, 1987 indicating his selection of PRBLI at "50 (percent) reduction." The form also indicates that the employee selected life insurance options A and B. On March 20, 2000 he elected to freeze all of his Option B life insurance. The record includes undated correspondence from the Office of Personnel Management (OPM) confirming this selection.

On August 16, 2021 OWCP calculated the amount of the employee's life insurance premiums that should have been deducted for the periods September 10, 2000 through January 11, 2003; January 12, 2003 through August 20, 2005; January 8, 2007 through November 21, 2009; and May 26, 2016 through March 2, 2020. It attached the employee's compensation payment history for the same periods.

By notice dated August 17, 2021, addressed to the employee's estate, OWCP issued a preliminary overpayment determination regarding the overpayment in the amount of \$2,144.58 for the period September 10, 2000 through March 2, 2020, for which the employee was without fault, because premiums for BLI and PRBLI were not deducted from those periodic rolls compensation payments. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP provided her with an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a telephone

³ Docket No. 04-1274 (issued December 16, 2004); Docket No. 00-2685 (issued November 28, 2001); Docket No. 92-0936 (issued December 14, 1992); Docket No. 88-0967 (issued August 2, 1988); Docket No. 87-1758 (issued December 9, 1987); Docket No. 85-0098 (issued February 26, 1985).

⁴ The Board notes that appellant has previously accepted claims. OWCP has a administratively combined OWCP File Nos. xxxxxx875, xxxxxx625, xxxxxx132, and xxxxxx926, with the latter serving as the master file.

⁵ The case record indicates that appellant was appointed executrix of the employee's estate on May 26, 2020.

conference, a final decision based on the written evidence, or a prerecoumpment hearing. No response was received.

By decision dated September 22, 2021, also addressed to the employee's estate, OWCP finalized the overpayment in the amount of \$2,144.58 for the period September 10, 2000 through March 2, 2020. It denied waiver of recovery of the overpayment and required the \$2,144.58 overpayment be repaid in full.

LEGAL PRECEDENT

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.⁶ 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.⁷

Under the Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁸ The coverage for BLI is effective unless waived,⁹ and premiums for basic and optional life coverage are withheld from the employee's pay.¹⁰ Upon retirement, separation from the employing establishment, or placement on the periodic 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.¹¹

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides that an employee receiving compensation under FECA may elect continuous withholdings from his or her compensation, so that his or her life insurance coverage may be continued without reduction. OWCP's regulations at 5 C.F.R. § 870.701 (December 5, 1980) provide that an eligible employee has 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

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8129(a).

⁸ *Id.* at § 8702(a).

⁹ *Id.* at § 8702(b).

¹⁰ *Id.* at § 8707.

¹¹ *Id.* at § 8706.

subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹²

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.¹³ 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.¹⁴

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.¹⁵

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹⁶

Thus, it 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).¹⁷ 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 6.500.12.¹⁸ Including sending the complete referral package to the national office for final review and forwarding to the FMS.¹⁹

ANALYSIS

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

¹² See *R.B., (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹³ 20 C.F.R. § 870.504(a)(1).

¹⁴ *Id.* at § 870.504(b).

¹⁵ 5 U.S.C. § 8707(d); see also *D.R., (G.R.)*, Docket No. 19-1675 (issued October 8, 2020); *R.B., (J.B.)*, and *D.H.*, *supra* note 12.

¹⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2020).

¹⁷ 31 C.F.R. § 285.2; *id.* at Chapter 6.500.15(g)(1)-(7) (September 2018). See also *R.B., (J.B.)*, *supra* note 12; *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

¹⁸ *Id.* at Chapter 6.500.12 (September 2020).

¹⁹ *Id.* at Chapter 6.500.15(e).

By notice dated August 17, 2021, addressed to the employee's estate, OWCP issued a notice of preliminary overpayment, finding that the employee had received an overpayment of compensation in the amount of \$2,144.58 for the period September 10, 2000 through March 2, 2020 due to under withholding of BLI and PRBLI premiums.

OWCP's procedures provide for recovery from a deceased debtor's estate.²⁰ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.²¹ 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 6.500.12,²² including sending the complete referral package to the national office for final review and forwarding to the FMS.²³

The evidence of record does not substantiate that actions OWCP has taken to recover the overpayment debt include a referral to FMS for appropriate offset under the TOP prior to taking overpayment actions against the employee's estate. 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 other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

²⁰ *Supra* note 17.

²¹ *Supra* note 17.

²² *Supra* note 17.

²³ *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 18, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board