

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

C.M., claiming as the representative of the estate of M.C., Appellant	)	
	)	
and	)	<b>Docket No. 21-0059</b>
	)	<b>Issued: February 23, 2022</b>
	)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Brockton, MA, Employer	)	
	)	

*Appearances:*  
Kenneth J. Goldberg, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 13, 2020 appellant, through counsel, filed a timely appeal from May 5, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether the employee received an overpayment of compensation in the amount of \$14,490.48 for the period October 29, 2005 through March 2, 2019, for which he was not at fault, because postretirement basic life insurance (PRBLI) premiums were not deducted from his FECA compensation; (2) whether the employee received an overpayment of compensation in the amount of \$12,697.61 for the period April 28, 2015 through March 2, 2019, for which he was not at fault, because optional life insurance (OLI) premiums were not deducted from his FECA compensation; and (3) whether OWCP properly denied waiver of recovery of the overpayments.

## **FACTUAL HISTORY**

OWCP accepted that on March 23, 2000 the employee, then a 49-year-old mail processor, sustained cervical strain, disc herniation at C5-6, cervical spondylosis with myelopathy, and cervical intervertebral disc with myelopathy as a result of pushing a cart while in the performance of duty. The employee stopped work on the date of injury and did not return.<sup>3</sup> OWCP paid the employee wage-loss compensation on the supplemental and periodic rolls.

On April 17, 2019 OWCP received a death certificate dated April 3, 2019 indicating that the employee had passed away on March 24, 2019. In a May 6, 2019 letter, the employee's widow notified OWCP that she was the employee's named beneficiary of his estate.

On July 18, 2019 the Division of Federal Employees' Compensation (DFEC) National Office advised OWCP that according to the Office of Personnel Management (OPM), at retirement the employee elected no reduction of his five multiples of OLI options B and C coverage, effective April 28, 2015, and no reduction to his PRBLI coverage, effective October 29, 2005. It stopped premium deductions for the employee's OLI coverage when he turned 65 and did not deduct PRBLI premiums. It was noted that the employee passed away in March 2019. OWCP was advised to take action as applicable, to collect the overpayment attributed to under-deducted OLI and PRBLI premiums from the survivor(s)/estate.

On July 26, 2019 OWCP notified OPM that an overpayment in the amount of \$12,697.61 had been created because it had failed to deduct OLI premiums from the employee's compensation during the period April 28, 2015 through March 24, 2019. It further notified OPM that an overpayment of \$14,490.48 had been created because it had failed to deduct PRBLI premiums from the employee's compensation during the period October 29, 2005 through March 2, 2019. OWCP noted that the total overpayment was \$27,188.09. It requested that OPM provide whether benefits were paid to the employee at the time of his death that may be administratively offset.

In a preliminary overpayment determination of July 26, 2019, OWCP notified the employee's widow that the employee had received an overpayment of compensation in the amount of \$14,490.48 because PRBLI premiums had not been properly deducted from the employee's FECA compensation for the period October 29, 2005 through March 2, 2019. It also notified her that the employee had received an overpayment of compensation in the amount of \$12,697.61 because BLI premiums had not been properly deducted from the employee's FECA compensation for the period April 28, 2015 through March 2, 2019. OWCP calculated the amount of the

---

<sup>3</sup> The employee was separated from the employing establishment due to his disability, effective June 25, 2004.

overpayments by adding the amount of the PRBLI premiums that should have been deducted from the employee's compensation to find a total overpayment of \$14,490.48 and adding the amount of the OLI premiums that should have been deducted from the employee's compensation to find a total overpayment of \$12,697.61. It further advised the employee's widow of its preliminary overpayment determination that the employee was not at fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, OWCP notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a letter of even date issued to the employee's widow as personal representative of the employee's estate, OWCP referenced its overpayment determination and advised of its intention to make a claim against the estate for the amount of the overpayment. It requested the name and address of the executor of the estate and the probate court handling the estate. OWCP further advised that the estate had the right to inspect OWCP debt records related to the overpayment and to request waiver of the overpayment and a prerecoupment hearing.

On August 29, 2019 OWCP received an overpayment action request form, dated August 22, 2019, in which the employee's widow requested a waiver and a prerecoupment hearing by telephone. The employee's widow submitted a completed Form OWCP-20 of even date, wherein she indicated that her total monthly income was \$1,573.00 and that her total monthly expenses were \$5,297.00. She further indicated that she had assets of \$231,538.00.

In an August 22, 2019 letter, counsel, on behalf of the employee's widow, requested a waiver of recovery of the overpayment because her monthly expenses exceeded her income, funeral expenses were excessive as the employee died in Florida and had to be transported to Massachusetts, and she had to purchase a new vehicle costing \$23,350.00 because she could not operate the employee's leased vehicle. Additionally, he contended that she suffered from severe anxiety, depression, and grief for which she was on medication. Counsel asserted that the employee's widow was unable to manage her finances and unemployable. He further asserted that a stable financial future was critical for preventing further deterioration of her mental health. Counsel concluded that the employee's widow would suffer undue hardship, be deprived of basic income, and recovery of the debt would be against equity and good conscience.

Counsel submitted an August 21, 2019 letter from Dr. Jane Yu, a Board-certified family practitioner. Dr. Yu noted that the employee's widow had been under her care for the treatment of severe anxiety, for which the employee's widow was on prescription medication. She advised that, due to the employee's widow mental health condition, the employee's widow was unable to manage her finances independently and was also unable to maintain employment. Dr. Yu related that the employee's widow was grieving the recent death of her spouse and needed financial support in the form of her spouse's life insurance benefits to maintain her stable mental health and avoid a worsening of her anxiety and depressive symptoms.

The prerecoupment hearing was held on January 8, 2020. Appellant testified about the mental condition and inability to handle finances of her mother, the employee's widow, following the death of her father, the employee. She noted that her father paid all of the bills, gave her mother money. Appellant further testified, among other things, that her mother feared losing her health insurance if she did not repay the overpayment and having to sell her home.

Following the prerecoumment hearing, in a February 28, 2020 letter, counsel noted that OWCP's preliminary overpayment determination was addressed to the employee's widow and not to the employee's estate, which had not been probated. He contended that unless there was a law or statute under which a widow or heirs of a deceased employee could be personally responsible for an overpayment created during the employee's lifetime, then the claim against the employee's widow should be dismissed.

By decision dated March 24, 2020, an OWCP hearing representative set aside the July 26, 2019 preliminary overpayment determination and remanded the case to OWCP to reissue the preliminary overpayment determination to the estate of the employee in care of the employee's widow. He found that OWCP failed to follow its procedures as outlined in Chapter 6.500.15 regarding collection of a deceased debtor's estate.<sup>4</sup>

On April 1, 2020 OWCP issued a new preliminary overpayment determination, addressed to the employee's estate, finding that an overpayment of compensation in the amount of \$14,490.48 had been created because PRBLI premiums had not been properly deducted from the employee's FECA compensation for the period October 29, 2005 through March 2, 2019. It determined that the employee's estate was not at fault in the creation of the overpayment and requested that the employee's estate should complete an overpayment action request form and a Form OWCP-20. Also, OWCP notified the employee's estate that, within 30 days of the date of the letter, it could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

A separate new preliminary overpayment determination of even date was issued by OWCP, addressed to the employee's estate, finding that an overpayment of compensation in the amount of \$12,697.61 because OLI premiums had not been properly deducted from the employee's FECA compensation for the period April 28, 2015 through March 2, 2019. It further advised the employee's estate of its preliminary determination that the employee's estate was not at fault in the creation of the overpayment and requested that the employee's estate complete an overpayment action request form and a Form OWCP-20. Also, OWCP notified the employee's estate that, within 30 days of the date of the letter, it could request a telephone conference, a final decision based on the written evidence, or a prerecoumment hearing.

In an April 17, 2020 letter, counsel advised that the employee's estate had not been probated and was anticipated that it had no assets. He requested direction on how to proceed with waiver of recovery of the overpayment. Alternatively, counsel requested an extension to respond to the preliminary overpayment determinations until such time when the employee's estate had been probated and its assets had been determined.

By decision dated May 5, 2020, addressed to the employee's estate, OWCP finalized that the preliminary overpayment determination that the employee had received an overpayment of compensation in the amount of \$14,490.48 for the period October 29, 2005 through March 2, 2019, as it failed to deduct 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

---

<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2018).

preliminary overpayment determination, as requested. OWCP directed recovery of the overpayment in full within 30 days.

In a separate decision of even date, addressed to the employee's estate, OWCP finalized that the preliminary overpayment determination that the employee had received an overpayment of compensation in the amount of \$12,697.61 for the period April 28, 2015 through March 2, 2019, as it failed to deduct OLI 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 in full within 30 days.

### **LEGAL PRECEDENT -- ISSUES 1 and 2**

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.<sup>5</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>6</sup>

Under the FEGLI program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and one or more of the options.<sup>7</sup> The coverage for BLI is effective unless waived<sup>8</sup> and premiums for BLI and OLI coverage are withheld from the employee's pay.<sup>9</sup> Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA 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 annuity or compensation payments.<sup>10</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>11</sup> however, the employee is responsible for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his compensation.<sup>12</sup>

---

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> *Id.* at § 8702(a).

<sup>8</sup> *Id.* at § 8702(b).

<sup>9</sup> *Id.* at § 8707.

<sup>10</sup> *Id.* at § 8706.

<sup>11</sup> *Id.* at § 8707(b)(2).

<sup>12</sup> *Id.* at § 8706(b)(3)(B); see *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that the claimant received an overpayment of compensation where he elected PRBLI with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989); see also *Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for the periods July 1983 through November 1989).

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 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 subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> 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).<sup>18</sup> 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,<sup>19</sup> including sending the complete referral package to the national office for final review and forwarding to the FMS.<sup>20</sup>

---

<sup>13</sup> See *D.H.*, Docket No. 19-0384 (issued August 12, 2019); see *V.H.*, Docket No. 18-1124 (issued January 16, 2019). See *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

<sup>14</sup> 5 C.F.R. § 870.504(a)(1).

<sup>15</sup> *Id.* at § 870.504(b).

<sup>16</sup> *Id.* at § 8707(d); see also *D.H.* and *S.P.*, *supra* note 13; *Keith H. Mapes*, 56 ECAB 130 (2004).

<sup>17</sup> *Supra* note 4.

<sup>18</sup> 31 C.F.R. § 285.2; *supra* note 4 at Chapter 6.500.15(g)(1)-(7) (September 2018). See also *D.U.*, Docket No. 20-0594 (issued June 4, 2021); *R.B. (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *W.J. (E.J.)*, Docket No. 18-1035 (issued July 9, 2019).

<sup>19</sup> *Supra* note 4 at Chapter 6.500.12 (September 2018).

<sup>20</sup> *Id.* at Chapter 6.500.15(e) (September 2018).

## ANALYSIS -- ISSUES 1 and 2

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

In a March 24, 2020 decision, OWCP's hearing representative set aside OWCP's July 26, 2019 preliminary overpayment determination, notifying the employee's widow that the employee had received an overpayment of compensation in the amount of \$14,490.48 for the period October 29, 2005 through March 2, 2019, for which he was not at fault, because PRBLI premiums were not deducted from his FECA compensation, and he had received an overpayment of compensation in the amount of \$12,697.61 for the period April 28, 2015 through March 2, 2019, for which he was not at fault, because OLI premiums were not deducted from his FECA compensation. The hearing representative remanded the case to OWCP to reissue the preliminary overpayment determination to the estate of the employee in care of the employee's widow pursuant to OWCP's procedures under Chapter 6.500.15, which provide for recovery from a deceased debtor's estate.

On remand, OWCP, on April 1, 2020, issued two new preliminary overpayment determinations to the employee's estate, but again failed to fully follow its procedures outlined in Chapter 6.500.15. 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.<sup>21</sup> 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,<sup>22</sup> including sending the complete referral package to the national office for final review and forwarding to the FMS.<sup>23</sup>

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. 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.<sup>24</sup> The case shall therefore be remanded to OWCP to follow all procedures as outlined in Chapter 6.500.15 of its procedures.<sup>25</sup> Following this and any other 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.

---

<sup>21</sup> *Supra* note 18.

<sup>22</sup> *Supra* note 20.

<sup>23</sup> *Supra* note 19.

<sup>24</sup> *See D.U., R.B. (J.B.), and W.J. (E.J.), supra* note 18.

<sup>25</sup> *Supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 23, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board