

March 26, 2022, for which she was without fault, because of an under withholding of basic life insurance (BLI) premiums; (2) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$1,031.75 for the period October 25, 2003 through March 26, 2022, for which she was without fault, because of a failure to deduct post-retirement basic life insurance (PRBLI) premiums for the periods October 25, 2003 through August 29, 2009 and from October 1, 2021 through March 26, 2022; (3) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,810.72 for the period October 25, 2003 through March 26, 2022, for which she was without fault, because of an under withholding of optional life insurance (OLI) premiums; (4) whether OWCP properly denied waiver of recovery of the overpayments; and (5) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On November 6, 2001 appellant, then a 41-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2001 she sustained neck, back, and knee injuries when a car ran a red light at full speed and struck her vehicle while in the performance of duty. She stopped work on October 23, 2001 and did not return. OWCP accepted the claim for cervical strain, lumbar strain and post-traumatic stress disorder (PTSD). It paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002.

OWCP received a January 9, 2003 OPM life insurance enrollment information (Form RI 76-13). The final salary on which appellant's Federal Employees' Group Life Insurance (FEGLI) insurance was based was \$39,760.00. Appellant's PRBLI was at the 75 percent reduction. He had standard OLI under Option A, five multiples of OLI with no reduction under Option B, and one multiple of OLI with no reduction under Option C (family).

In a July 27, 2012 letter, OWCP notified appellant that it had deducted \$47.58 in OLI premiums and \$10.50 in BLI premiums every 28 days from her continuing compensation payments.

In a letter dated July 9, 2019, OWCP informed the Office of Personnel Management (OPM) that appellant was entitled to PRBLI with monthly premiums of \$83.46 at the 75 percent reduction. Appellant was also entitled to OLI, code Z1.

In a letter dated September 17, 2019, OWCP requested clarification from OPM because there was no executed continuation of life insurance coverage election forms (Form SF-2818) in the case record.

On September 12, 2020 OWCP deducted a \$162.60 OLI premium, code Z1, and a \$10.50 BLI premium from appellant's wage-loss compensation for the period August 16 through September 12, 2020. It noted July 19, 2020 as the OLI coverage date.

In an August 20, 2021 periodic roll payment report and August 23, 2021 fiscal memorandum, OWCP noted that, based on information previously received from OPM, it had adjusted appellant's date-of-injury base salary from \$33,000.00 to \$39,760.00. This adjustment

resulted in a BLI premium of \$12.60, a \$2.10 increase above the \$10.50 previously deducted, and an OLI premium of \$193.40, an increase of \$30.80 above the \$162.60 previously deducted. OWCP added the \$2.10 and \$30.80 amounts to equal a \$32.90 overpayment of compensation. It also noted that PRBLI premiums had not been deducted.³

In an April 11, 2022 overpayment referral memorandum, OWCP noted that it had not utilized the proper annual salary to calculate appellant's life insurance deductions for the period October 25, 2003 through March 26, 2022.

In a preliminary overpayment determination dated April 14, 2022, OWCP notified appellant that she had received an overpayment of compensation for the period October 25, 2003 through March 26, 2022 in the amount of \$4,323.87 because BLI, OLI, and PRBLI premiums had not been properly deducted from her FECA compensation. It noted that OPM had provided revised information on the amount of salary used to calculate her life insurance premiums, and that the increased amount had resulted in increased life insurance premiums. OWCP provided a log of all wage-loss compensation payments to appellant from October 25, 2003 through March 26, 2022, and an overpayment worksheet with calculations, which revealed that for the period October 5, 2003 through March 26, 2022, it deducted \$2,551.06 in BLI premiums whereas it should have deducted \$3,032.46, a difference of \$481.40. It had deducted \$14,182.80 in OLI premiums whereas the correct amount was \$16,993.52, a difference of \$2,810.72. Additionally, OWCP had not deducted PRBLI premiums for the periods October 25, 2003 through August 29, 2009 and from October 1, 2021 through March 26, 2022, whereas \$1,031.75 should have been deducted for the combined periods. It added the three amounts to reach a total overpayment of \$4,323.87. OWCP further advised appellant of its preliminary determination that she was without 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), and submit documentation including copies of income tax returns, bank account statements, bills and cancelled checks, pay slips, and other records that support income and expenses. Additionally, it advised her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing.

In response, appellant submitted a birth certificate and final adoption decree to establish a dependent.

By decision dated May 23, 2022, OWCP finalized the April 14, 2022 preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount of \$1,031.75 because no deductions for PRBLI premiums were made from her FECA compensation payments for the periods October 25, 2003 through August 29, 2009 and from October 1, 2021 through March 26, 2022. OWCP further found that she had received a \$481.40 overpayment of compensation because it had failed to properly deduct BLI premiums from her FECA compensation payments for the period October 25, 2003 through March 26, 2022. Additionally, it found that appellant had received a \$2,810.72 overpayment of compensation

³ OWCP initially issued a preliminary notice of overpayment on September 28, 2021. On April 5, 2022 it invalidated the September 28, 2021 preliminary notice as additional adjustments to appellant's wage-loss compensation benefits were required, thus altering the amount and period of the overpayment.

because it had failed to properly deduct the full amount of OLI premiums for the period October 25, 2003 through March 26, 2022. OWCP added the three amounts to total a \$4,323.87 overpayment of compensation. Additionally, it found that appellant was without fault in the creation of the overpayments, but denied waiver of recovery of the overpayments, noting that she had not submitted financial information in response to its April 14, 2022 preliminary overpayment determination. OWCP required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUES 1, 2 & 3

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.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 FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and 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 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.⁹ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁰ however, the employee is responsible for payment of premiums for OLI coverage, which is accomplished by authorizing withholdings from his or her compensation.¹¹

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

⁴ *Id.* at § 8102(a).

⁵ *Id.* at § 8129(a).

⁶ 5 U.S.C. § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

⁹ *Id.* at § 8706.

¹⁰ *Id.* at § 8707(b)(2).

¹¹ *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

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).¹² 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.¹³

ANALYSIS -- ISSUE 1, 2 & 3

The Board finds that OWCP improperly determined that appellant received overpayments of compensation in the amount of \$481.40 for the period October 25, 2003 through March 26, 2022 because of an under withholding of BLI premiums, \$1,031.75 for the periods October 25, 2003 through August 29, 2009 and from October 1, 2021 because of a failure to deduct PRBLI premiums, and \$2,810.72 for the period October 25, 2003 through March 26, 2022 because of an under withholding of OLI premiums.

In its May 23, 2022 decision, OWCP found that appellant had been overpaid a total of \$4,323.87 in compensation as it had under deducted OLI and BLI premiums and failed to deduct PRBLI premiums from her continuing wage-loss compensation. The case record contains a January 9, 2003 OPM statement of appellant's life insurance election (Form RI 76-13), indicating that she had elected Option A standard OLI, Option B with no reduction on five multiples of OLI, and Option C (family) on one multiple of OLI. Her PRBLI was at the 75 percent reduction.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received overpayments of compensation totaling \$4,323.87 for the period October 25, 2003 through March 26, 2022 caused by under withholding or failure to withhold OLI, BLI, and PRBLI premiums. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage, and the type of coverage elected after separation from federal service or retirement.¹⁴ While the record contains forms and communications from OPM regarding appellant's OLI, BLI, and PRBLI coverage, the record does not contain evidence establishing that appellant affirmatively signed a document electing various options of coverage. OWCP noted the lack of an executed election form in its September 17, 2019 letter. No election form was subsequently received.

As OWCP has not factually established appellant's election of basic and optional life insurance coverage, the Board finds that it has not met its burden of proof to establish that she received overpayments of compensation totaling \$4,323.87 from October 25, 2003 through

¹² 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).

¹³ 5 U.S.C. § 8707(d); see also *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, *supra* note 11.

¹⁴ *M.B.*, Docket No. 20-0560 (issued June 10, 2021); see *G.C.*, Docket No. 18-1451 (issued May 5, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019).

March 26, 2022 due to under deduction or failure to deduct OLI, BLI, and PRBLI life insurance premiums.¹⁵

CONCLUSION

The Board finds that OWCP improperly determined that appellant received overpayments of compensation in the amount of \$481.40 for the period October 25, 2003 through March 26, 2022 because of an under withholding of BLI premiums, \$1,031.75 for the periods October 25, 2003 through August 29, 2009 and from October 1, 2021 because of a failure to deduct PRBLI premiums, and \$2,810.72 for the period October 25, 2003 through March 26, 2022 because of an under withholding of OLI premiums.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ In light of the Board's disposition of Issues 1, 2, and 3, Issues 4 and 5 are rendered moot.