

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

S.B., Appellant)	
)	
and)	Docket No. 22-1021
)	Issued: January 11, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Tampa, FL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 24, 2022 appellant filed a timely appeal from a June 17, 2022 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 OWCP properly determined that appellant received an overpayment of compensation, in the amount of \$15,867.90, for the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022, for which he was without fault, because OWCP failed to deduct optional life insurance (OLI) premiums from his wage-loss compensation; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$427.92 every 28 days from appellant's continuing compensation benefits.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2004 appellant, then a 58-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on September 7, 2004 he injured his back and right shoulder area when he lifted a bag off the conveyor belt while in the performance of duty. He stopped work on September 8, 2004. OWCP accepted the claim for herniated disc. It paid appellant wage-loss compensation on the supplemental rolls effective November 28, 2004, and on the periodic rolls effective December 26, 2004. OWCP subsequently expanded the acceptance of appellant's claim to include displacement of lumbar intervertebral disc without myelopathy and closed dislocation of the lumbar vertebra.

An Office of Personnel Management (OPM) benefits form dated January 13, 2009, indicated that, as the annuitant, appellant had elected Basic Life Insurance, Post-Retirement Life Insurance no reduction, Optional Life Insurance -- Option A, and Optional Life Insurance -- Option B 3X no reduction. It noted that the final base salary on which the Federal Employees' Group Life Insurance (FEGLI) was based was \$29,036.00.

In a letter dated December 1, 2010, OWCP informed appellant that he had the option of continuing his Option B and Option C life insurance beyond the age of 65. It requested that he complete the attached form and return it to OPM.

In a letter dated July 1, 2016, OPM informed OWCP's claims examiner that appellant's annual salary was \$29,036.00 for the purpose of calculating life insurance premiums. It requested that OWCP deduct for Code P0: Basic, Option A, and Option B 3X no reduction.

In a memorandum of telephone call (Form CA-110) dated May 10, 2022, OWCP noted that appellant indicated that he had optional life insurance, but he did not realize that his deductions dropped beginning May 29, 2016. It informed him that there would be an overpayment from May 29, 2016 through April 23, 2022 for nondeduction of OLI premiums.

A fiscal worksheet noted a gross compensation amount of \$168,999.84 for the period May 29, 2016 through April 23, 2022 and a net amount of \$153,485.64, following deduction for OLI premiums totaling \$15,514.20.

By letter dated May 12, 2022, OWCP indicated that appellant's correct net compensation received every 28 days was \$1,711.68, which included an OLI deduction Code P0 of \$324.00 every periodic payment. It noted that the new payment began on April 24, 2022. A copy of appellant's compensation payment history from May 29, 2016 through April 23, 2022, which noted miscellaneous deductions, demonstrated that no deductions were taken out for OLI code P0 every periodic payment.

On May 17, 2022 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$15,867.90 for the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022 because it failed to make correct deductions for optional life insurance. It indicated that he elected to continue coverage for Option B at 3 multiples of his final salary past age 65. OWCP explained that it failed to make deductions during the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022. It provided its calculations explaining the \$15,867.90 overpayment. OWCP

further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment. It requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. OWCP also requested that appellant provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, to support his reported income, assets, and expenses. It provided an overpayment action request form and notified him that, within 30 days of the date of the letter he could request a final decision based on the written evidence, or a prerecoupment hearing.

OWCP received an attending physician's report (Form CA-20) dated June 1, 2022.

By decision dated June 17, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$15,867.90 because it failed to make deductions for optional life insurance for the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022. It found her without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$427.92 from appellant's continuing compensation payments every 28 days.

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 When an overpayment has been made to an individual because of an error or 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.³

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁴ The coverage for basic life insurance is effective unless waived,⁵ and premiums for basic and optional life coverage are withheld from the employee's pay.⁶ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation 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.⁷ Basic life insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.⁸ However, the employee is responsible

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

⁴ 5 U.S.C. § 8702(a).

⁵ *Id.* at § 8702(b).

⁶ *Id.* at § 8707.

⁷ *Id.* at § 8706.

⁸ *Id.* at § 8707(b)(2).

for payment of premiums for optional life insurance coverage, which is accomplished by authorizing withholdings from his or her compensation.⁹

According to 5 U.S.C. § 8706(b)(2), 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. OWCP's regulations provide 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).¹⁰

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 remains in effect.¹¹ An employee who does not file a life insurance election 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.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

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$15,867.90 for the period January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022.

OWCP found that an overpayment of compensation in the amount of \$15,867.90 was created because OWCP failed to deduct OLI premiums for the period January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022 from his wage-loss compensation.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received a \$15,867.90 overpayment due to its failure to deduct premiums for Option B

⁹ *Id.* at § 8706(b)(3)(B). *See S.P.*, Docket No. 17-1888 (issued July 18, 2018); *Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that 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, 1998 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment of compensation was created due to no deduction of premiums for OLI for the period July 1983 through November 1989).

¹⁰ 5 C.F.R. § 870.701; *see also S.P., id.*; *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹¹ 5 C.F.R. § 870.504(a)(1).

¹² *Id.* at § 870.504(b).

¹³ 5 U.S.C. § 8707(d); *see also V.H.*, Docket No. 18-1124 (issued January 16, 2019); *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

OLI. While the record contains forms and communications from OPM regarding appellant's OLI coverage, the record does not contain evidence establishing that appellant affirmatively signed a document electing Option B OLI coverage. The record does not contain a signed election form showing which coverage he actually selected or if he actually selected coverage. The Board has previously found that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement in order to establish the fact of overpayment of compensation.¹⁴ As OWCP has not factually established appellant's election of OLI during the claimed period, it has not met its burden of proof to establish that a \$15,867.90 overpayment was created for the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022 as alleged.¹⁵

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$15,867.90 for the periods January 10 through April 2, 2016 and May 29, 2016 through April 23, 2022, for which he was without fault.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 11, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ *J.R.*, Docket No. 21-0631 (issued July 21, 2022); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, (*E.S.*), Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

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