

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

B.B., Appellant	)	
	)	
and	)	Docket No. 22-0914
	)	Issued: June 12, 2023
U.S. POSTAL SERVICE, NAPERVILLE POST	)	
OFFICE, Naperville, IL, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 19, 2022 appellant filed a timely appeal from a May 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$17,120.71 for the period April 9, 2018 through August 14, 2021, for which he was without fault, because OWCP failed to deduct optional life

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 \$400.00 from appellant's continuing compensation benefits every 28 days.

### **FACTUAL HISTORY**

On May 17, 2004 appellant, then a 58-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 15, 2004 he sustained back, bilateral knee, left elbow, left shoulder, and right hip injuries when he slipped and fell while in the performance of duty. OWCP accepted the claim for right lumbar strain, right hip and thigh sprains, back contusion, displacement of lumbar intervertebral disc without myelopathy, and lumbar spondylosis without myelopathy or radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls effective November 26, 2005 and on the periodic rolls effective November 25, 2007. From April 1 to 28, 2018 OWCP paid him on the supplemental rolls. It reinstated appellant's periodic rolls payment on April 29, 2018.

An August 11, 2008 Office of Personnel Management (OPM) letter to OWCP related that as a compensationner, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage based on a final base salary of \$56,518.00. It related that OWCP should deduct premiums for Code R1, which included Basic, Option A Standard, Option B 3 times salary, and Option C1 Family. The letter also noted that appellant's post-retirement election was 75 percent reduction. Commencing date for postretirement deductions was March 29, 2008.

On June 30, 2011 appellant signed an OPM benefits election form electing to freeze his Option B life insurance at the value as of age 65. An OWCP form dated April 10, 2012, indicated that, as the annuitant, he had elected Basic Life Insurance (BLI) of \$59,000.00 with a 75 percent reduction, and OLI -- Option B 3X of \$57,000.00 for a total Option B amount of \$171,000.00 with a monthly reduction of \$3,420.00 (the total Option B amount times .02).

In a memorandum of telephone call (Form CA-110) dated July 27, 2012, OWCP informed appellant that he had an OLI Option B freeze withholding per a letter received from OPM.

An OWCP periodic disability payment report dated January 25, 2019 noted that appellant's OLI was not reinstated in April 2018 when appellant was placed on the periodic rolls. It noted that as of January 6, 2019 an OLI premium was deducted in the amount of \$19.18. OWCP also noted that a separate OLI under-subscription existed.

An August 26, 2021 supplemental rolls worksheet calculated coverage for the amount of \$59,000.00 for OLI Code R1 resulting in OLI premium of \$17,120.71 for the period April 9, 2018 through August 14, 2021.

On August 26, 2021 OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$17,120.71 for the period April 9, 2018 through August 14, 2021 because it failed to make correct deductions for OLI Code R1. It further advised him of its preliminary determination that he was without fault in the creation of the overpayment. OWCP requested that appellant 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 recovery of the overpayment. It also requested that he provide financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, to support his reported income, assets, and expenses. OWCP provided an overpayment action request form and notified appellant 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.

In a September 14, 2021 overpayment action request form, appellant requested waiver of recovery of the overpayment and a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. In a Form OWCP-20 of even date, he reported his total monthly income as \$5,023.37. Appellant also reported that his monthly expenses totaled \$4,625.71 and that he had assets of \$160.00 cash on hand, \$55,761.68 in a checking account, \$10,441.18 in a savings account, and \$106,731.16 in stocks and bonds, resulting in total assets of \$172,094.02. He submitted a mortgage statement showing a total monthly payment of \$1,387.92 and a FECA benefit statement noting a check in the net amount of \$2,052.05.

A telephonic hearing was held before an OWCP hearing representative on February 17, 2022.

By decision dated May 4, 2022, OWCP's hearing representative finalized the August 26, 2021 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$17,120.71 because OLI Code R1 premiums were not properly deducted from his compensation benefits for the period April 9, 2018 through August 15, 2021. The hearing representative further finalized the finding that appellant was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment as he had not provided the necessary financial information. The hearing representative required recovery of the overpayment by deduction of \$400.00 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.<sup>3</sup> The coverage for BLI is effective unless waived,<sup>4</sup> and premiums for basic and optional life coverage are withheld from the employee's pay.<sup>5</sup> 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.<sup>6</sup> BLI coverage shall be continued without cost to

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<sup>3</sup> 5 U.S.C. § 8702(a).

<sup>4</sup> *Id.* at § 8702(b).

<sup>5</sup> *Id.* at § 8707.

<sup>6</sup> *Id.* at § 8706.

an employee who retired or began receiving compensation on or before December 31, 1989;<sup>7</sup> however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.<sup>8</sup>

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 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).<sup>9</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>10</sup>

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.<sup>11</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>12</sup>

### *ANALYSIS -- ISSUE 1*

The Board finds that appellant received an overpayment of compensation for the period April 9, 2018 through August 14, 2021, for which he was without fault, because OWCP failed to deduct OLI premiums from his wage-loss compensation.

On June 30, 2011 appellant signed an OPM benefits election form electing to freeze his Option B life insurance at the value as of age 65. An OWCP form dated April 10, 2012, indicated that, as the annuitant, appellant had elected Basic Life Insurance (BLI) of \$59,000.00 with a 75

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<sup>7</sup> *Id.* at § 8707(b)(2).

<sup>8</sup> *Id.* at § 8706(b)(3)(B). *See J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

<sup>9</sup> *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).

<sup>10</sup> 5 U.S.C. 8707(d); *see also B.B.*, *supra* note 8.

<sup>11</sup> *Id.* at § 8102(a).

<sup>12</sup> *Id.* at § 8129(a).

percent reduction, and OLI -- Option B 3X of \$57,000.00 for a total Option B amount of \$171,000.00 with a monthly reduction of \$3,420.00 (the total Option B amount times .02).

An OWCP periodic disability payment report dated January 25, 2019 noted that appellant's OLI was not reinstated in April 2018 when OWCP placed appellant on the periodic rolls. As the record establishes that he had elected OLI and OWCP failed to deduct premiums for OLI from April 9, 2018 through August 14, 2021, an overpayment of compensation was created.

The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.

The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.<sup>13</sup> In its preliminary overpayment determination and August 26, 2021 worksheet, OWCP advised that it had computed the overpayment by finding he had been overpaid \$17,120.17 because it had failed to deduct his OLI Code R1 for the period April 9, 2018 through August 15, 2021. However, it did not provide the OLI amount that should have been deducted nor how the overpayment was calculated other than noting an undersubscription for OLI in the amount of \$17,120.71. The Board notes in this regard that the record indicates that appellant elected OLI -- Option B 3X of \$57,000.00 with a total Option B times monthly reduction (.02) of \$171,000.00.

It is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions.<sup>14</sup> Its procedures provide that a preliminary notice of overpayment must clearly set forth the reason for the overpayment and a clearly written explanation as to how the overpayment was calculated.<sup>15</sup> OWCP should clearly explain its calculations regarding the amount that should have been deducted for each period and the evidence supporting such deductions identified.<sup>16</sup>

The case will be remanded for proper findings as to the amount of overpayment based on OWCP's failure to properly deduct premiums for OLI Code R1. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>17</sup>

### CONCLUSION

The Board finds that appellant received an overpayment of compensation for the period April 9, 2018 through August 14, 2021, for which he was without fault, because OWCP failed to

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<sup>13</sup> See *J.K.*, Docket No. 20-1545 (issued July 27, 2021); *R.U.*, Docket No. 16-0027 (issued March 24, 2016); *L.D.*, Docket No. 15-1102 (issued January 20, 2016).

<sup>14</sup> See *L.D.*, Docket No. 20-1344 (issued March 9, 2023); *A.V.*, Docket No. 21-0887 (issued May 12, 2022).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.5a (September 2020).

<sup>16</sup> See *J.K.*, *supra* note 13; *G.A.*, Docket No. 15-0095 (issued April 2, 2015).

<sup>17</sup> In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

deduct OLI premiums from his wage-loss compensation; however, the case is not in posture for decision regarding the amount of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** May 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 12, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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