

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

K.T., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, LOS ANGELES)
INTERNATIONAL AIRPORT, Los Angeles, CA,)
Employer)

**Docket No. 23-0205
Issued: June 28, 2023**

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 November 28, 2022 appellant filed a timely appeal from an October 27, 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 to consider the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$13,196.53 for the period November 10, 2009 through March 26, 2022, for which he

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 27, 2022 decision, OWCP received additional evidence. 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.*

was without fault, because of an underwithholding of post-retirement basic life insurance (PRBLI) premiums; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$150.00 every 28 days from appellant's continuing compensation benefits.

FACTUAL HISTORY

On August 10, 2009 appellant, then a 47-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that on August 5, 2009 he experienced pain in his low back, right hand, and "two center fingers" while in the performance of duty. In an accompanying memorandum dated August 5, 2009, his supervisor, D.S., noted that appellant related that on that date he slipped on liquid on the floor and fell onto his left hip and lower back and impacted his right hand on a cabinet in a private screening room. OWCP accepted appellant's claim for back contusion; displacement of lumbar intervertebral disc without myelopathy; and incisional hernia without obstruction or gangrene. It paid appellant on the supplemental rolls as of October 11, 2009, and on the periodic rolls as of December 20, 2009.

In a memorandum to the file dated November 23, 2009, OWCP indicated that appellant had optional life insurance Code M5, as well as basic life insurance, and that his optional life insurance salary was \$39,194.00.

On January 26, 2016 the Office of Personnel Management (OPM) informed OWCP that, as a compensation, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic life insurance (BLI), optional life insurance (OLI), and PRBLI coverage. The final base salary on which FEGLI was based was \$38,243.00. OPM requested that OWCP deduct life insurance premiums for code M5 basic option at 75 percent reduction, Option B times two with full reduction, and Option C times five with full reduction. It noted that appellant's PRBLI election was no reduction and deductions should have commenced on November 10, 2009.

In a January 29, 2016 OWCP memorandum to the District Director, the Fiscal Operations Branch Chief related that OPM had advised that appellant had optional life insurance coverage code M5 and that appellant's current life insurance deductions should be reviewed. It noted that appellant's final salary was \$38,243.00 and that his PRBLI election was no reduction. The memorandum also indicated that appellant carried Option B at 2x multiples, full reduction, and Option C at 5x multiples, full reduction. It also noted that this coverage was the *final* life insurance determination by OPM for post-retirement coverage, and that appellant's PRBLI coverage should begin on November 10, 2009. (Emphasis in the original.)

In a letter dated April 8, 2022, OWCP notified appellant about his continued entitlement to compensation benefits. It advised him that it was making deductions for PRBLI no reduction from his continuing compensation payments in the amount of \$98.02, effective March 27, 2022.

In an automated compensation payment system (ACPS) form of even date, OWCP noted that it had deducted a premium for PRBLI at no reduction from appellant's continuing compensation payment for the period March 27 through April 23, 2022, as instructed by OPM. Appellant's final base salary on which FEGLI was based was \$38,243.00.

A manual adjustment form dated April 14, 2022 noted that appellant had elected PRBLI coverage effective November 10, 2009; however, no action had been taken to deduct his premiums until March 27, 2022. The form noted that appellant had received \$393,003.16 in net compensation from November 10, 2009; however, PRBLI premiums should have been deducted in the amount of \$13,196.53, therefore appellant should have only received net compensation in the amount of \$379,806.43.

In a preliminary overpayment determination dated April 18, 2022, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$13,196.53 because PRBLI premiums had not been properly deducted from his FECA compensation for the period November 10, 2009 through March 26, 2022. It provided overpayment calculations, which revealed that the overpayment occurred from November 10, 2009 through March 26, 2022 and included PRBLI overpayment calculations to reach the \$13,196.53 total overpayment. OWCP further advised appellant of its preliminary determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, it advised him that, within 30 days of the date of the letter, he could request a final decision based on the written evidence or a precoupment hearing.

On May 1, 2022 appellant requested a precoupment hearing by telephone and waiver of recovery of the overpayment. In a partially-completed Form OWCP-20 of even date, appellant reported that he had no monthly income or assets. He listed monthly expenses totaling \$1,938.00. Appellant submitted financial documentation supporting his reported expenses.

In a letter dated May 27, 2022, OPM advised OWCP that appellant had requested cancellation of his Federal Employees' Group Life Insurance (FEGLI) effective June 1, 2022. It noted that OWCP should deduct for Code B0 and make the cancellation of life insurance effective June 1, 2022.

During a telephonic hearing held on August 12, 2022, appellant testified that recovery of the overpayment would cause him undue financial hardship. Following the hearing, he was afforded 30 days to complete his Form OWCP-20 and provide supporting financial documentation. Appellant thereafter submitted additional financial documentation of his expenses.

By decision dated October 27, 2022, OWCP's hearing representative finalized the April 18, 2022 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$13,196.53 for the period November 10, 2009 through March 26, 2022, due to underdeduction of PRBLI premiums. The hearing representative further found that appellant was without fault in the creation of the overpayment but, denied waiver of recovery of the overpayment. The hearing representative required recovery of the overpayment by deducting \$150.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

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.³ 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.⁴

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁵ The coverage for BLI is effective unless waived,⁶ and premiums for basic and optional life coverage are withheld from the employee's pay.⁷ 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.⁸ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹⁰

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 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).¹¹

³ *Id.* at § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ *Id.* at § 8707(b)(2).

¹⁰ *Id.* at § 8706(b)(3)(B). See *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

¹¹ See *E.R.*, Docket No. 21-1046 (issued April 15, 2022); *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).

Any 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 underwithholding 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 \$13,196.53, for the period November 10, 2009 through March 26, 2022.

The record contains OPM's letter dated January 26, 2016 notifying OWCP that appellant had BLI, OLI, and PRBLI coverage, for which it should have deducted premiums effective November 10, 2009. OWCP thereafter, on April 8, 2022, reviewed the fiscal record and determined that PRBLI premiums had not been deducted.

The Board finds, however, that OWCP failed to adequately support its determination that appellant received a \$13,196.53 overpayment due to its failure to properly deduct premiums for PRBLI. While the record includes communications from OPM regarding appellant's PRBLI coverage, the record does not contain evidence that the employee affirmatively signed a document electing PRBLI coverage. The record does not contain a signed election form showing which coverage he 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 in order to establish the fact of overpayment of compensation.¹⁴ As OWCP has not factually established the employee's election of PRBLI on the relevant dates, it has not met its burden of proof to establish that a \$13,196.53 overpayment was created between November 10, 2009 through March 26, 2022, as alleged.¹⁵

The Board therefore finds that OWCP failed to meet its burden of proof to establish that an overpayment of compensation occurred.¹⁶

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$13,196.53 for the period November 10, 2009 through March 26, 2022.

¹² 20 C.F.R. § 870.504(b).

¹³ 5 U.S.C. § 8707(d).

¹⁴ *J.P.*, Docket No. 18-1194 (issued April 28, 2020); *P.K.*, Docket No. 18-0913 (issued March 5, 2020); *C.P.*, Docket No. 19-0317 (issued July 1, 2019); *R.F.*, Docket No. 18-0739 (issued January 2, 2019); *D.T.*, Docket No. 17-0901 (issued January 29, 2018).

¹⁵ *J.P.*, *id.*; *R.F.*, *id.*

¹⁶ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 28, 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