



## **ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$423.49 for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019, for which he was without fault, because basic life insurance (BLI) premiums were not properly deducted from his FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

## **FACTUAL HISTORY**

On October 14, 2014 appellant, then a 57-year-old animal caretaker, filed an occupational disease claim (Form CA-2) alleging that he experienced stress due to a previous work-related injury. On the reverse side of the claim form, the employing establishment indicated that he stopped work on September 8, 2014. OWCP accepted the claim for dysthymic disorder and unspecified post-traumatic stress disorder. It paid appellant wage-loss compensation on the supplemental rolls as of September 8, 2014 and on the periodic rolls as of November 12, 2017. The employing establishment terminated his employment on March 17, 2015.

A March 1, 2016 OWCP pay rate memorandum indicated that appellant had BLI based on a \$49,420.16 salary.

In a March 8, 2016 letter, OWCP notified appellant that it was deducting BLI from his gross FECA compensation payments for the period September 8, 2014 through March 16, 2015.

Supplemental rolls payment reports reflected that BLI premiums were deducted from appellant's FECA compensation from September 8, 2014 through March 16, 2015.

Supplemental rolls payment reports from March 17, 2015 through July 20, 2019 reflected that BLI premiums were not deducted from appellant's FECA compensation.

A July 17, 2019 unsigned form letter from the Office of Personnel Management (OPM) indicated that appellant elected to receive FECA benefits. The form noted that his final salary was \$40,967.81.

An August 8, 2019 OWCP manual adjustment form indicated that it should have deducted BLI premiums from appellant's compensation after he separated from the employing establishment. It calculated that it should have deducted \$731.25 from his total entitlement from March 17, 2015 through July 20, 2019.

An August 6, 2019 letter from OPM indicated that appellant had elected to receive FECA compensation benefits and had been dropped from OPM rolls. It noted that he had received dual benefits from September 2, 2017 through June 30, 2019. OPM noted that any applicable deductions for life insurance benefits would have covered the same time period.

An August 21, 2019 OWCP manual adjustment form indicated that from September 2, 2017 through June 30, 2019 OPM made BLI premium deductions for appellant. It recalculated that OWCP should have deducted \$423.49 from his total entitlement from March 17, 2015 through September 1, 2017 and July 1 through 20, 2019.

In an August 21, 2019 letter, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$423.49 because BLI premiums were not deducted from his wage-loss compensation for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019. It also made a preliminary finding that he was without fault in the creation of the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting his reported income and expenses. Additionally, it notified him that, within 30 days of the date of the letter, he could request a final decision based on the written record or a precoupment hearing. No response from appellant was received.

By decision dated September 23, 2019, OWCP finalized its preliminary determination that a \$423.49 overpayment was created because BLI premiums were not deducted from appellant's wage-loss compensation for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019. It found that he was without fault in the creation of the overpayment, but denied waiver of recovery. OWCP required appellant to pay the lump-sum amount of \$423.49 within 30 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 his or her duty.<sup>3</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>4</sup>

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the forms of OLI.<sup>5</sup> The coverage for BLI is effective unless waived,<sup>6</sup> and premiums for BLI and OLI coverage are withheld from the employee's pay.<sup>7</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>8</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989.<sup>9</sup> However, the

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> 20 C.F.R. §§ 10.434-10.437; *J.L.*, Docket No. 18-0212 (issued June 8, 2018).

<sup>5</sup> 5 U.S.C § 8702(a); *see also I.J.*, Docket No. 19-1672 (issued March 10, 2020).

<sup>6</sup> *Id.* at § 8702(b).

<sup>7</sup> *Id.* at § 8707.

<sup>8</sup> *Id.* at § 8706.

<sup>9</sup> *Id.* at § 8707(b)(2).

employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.<sup>10</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) provides that an eligible employee has 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>11</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 remains in effect.<sup>12</sup> 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.<sup>13</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>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$423.49 for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019, for which he was without fault, because BLI premiums were not properly deducted from his FECA wage-loss compensation.

OWCP found that an overpayment of compensation in the amount of \$423.49 was created because it failed to deduct BLI premiums from appellant's wage-loss compensation for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019. The record includes a July 17, 2019 letter from OPM indicating that he elected to receive FECA benefits. The form

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<sup>10</sup> *Id.* at § 8706(b)(3)(B). See *B.B.*, Docket No. 17-1733 (issued March 26, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>11</sup> *G.C.*, Docket No. 18-1451, (issued May 5, 2020); *G.L.*, Docket No. 19-0297 (issued October 23, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>12</sup> 5 C.F.R. § 870.504(a)(1).

<sup>13</sup> *Id.* at § 870.504(b).

<sup>14</sup> *Id.* at § 8707(d); see also *G.C.*, *supra* note 11.

noted that appellant's final salary was \$40,967.81. Supplemental rolls payment reports from March 17, 2015 through July 20, 2019 reflected that BLI premiums were not deducted from his FECA compensation. An August 21, 2019 OWCP manual adjustment form indicated that from September 2, 2017 through June 30, 2019 OPM made BLI premium deductions for appellant. It properly determined that OWCP should have deducted BLI premiums from his compensation for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019. The Board thus finds that OWCP has established fact of overpayment.

OWCP calculated the amount of the resulting overpayment as \$423.49. As noted, 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>15</sup> The record contains the compensation payment record, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred. The Board, thus, finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$423.49 for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019, as BLI premiums were not properly deducted.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>17</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment, OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>18</sup>

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that, such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>19</sup>

Section 10.438 of the implementing regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The

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<sup>15</sup> 5 U.S.C. § 8102.

<sup>16</sup> See *E.R.*, Docket No. 21-1046 (issued April 15, 2022); *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

<sup>17</sup> 5 U.S.C. § 8129(a)-(b).

<sup>18</sup> *L.S.*, 59 ECAB 350 (2008).

<sup>19</sup> 20 C.F.R. § 10.437; *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

information is also used to determine the repayment schedule, if necessary.<sup>20</sup> Failure to submit the requested information within 30 days of the request shall result in denial of waiver.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>22</sup>

In its preliminary overpayment determination dated August 21, 2019, OWCP provided a Form OWCP-20 and requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income, expenses and assets. However, no response from appellant was received. As a result, OWCP did not have the information required under section 10.438 of OWCP's regulations, which was necessary to determine whether waiver of recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>23</sup> It was, therefore, required to deny waiver of recovery of the overpayment.<sup>24</sup>

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$423.49 for the periods March 17, 2015 through September 1, 2017 and July 1 through 20, 2019, for which he was without fault, because BLI premiums were not properly deducted from his FECA wage-loss compensation. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>20</sup> *Id.* at § 10.438(a).

<sup>21</sup> *Id.* at § 10.438.

<sup>22</sup> *Id.* at § 10.436.

<sup>23</sup> *Supra* note 20 *See also D.C.*, Docket No. 19-0118 (issued January 15, 2020); *E.M.*, Docket No. 19-0857 (issued December 31, 2019); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

<sup>24</sup> *Supra* note 21.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 30, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board