

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

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<b>J.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1290</b>
	)	<b>Issued: March 6, 2023</b>
<b>U.S. POSTAL SERVICE, FRESNO</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Fresno, CA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 26, 2021 appellant filed a timely appeal from a March 18, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-1290.<sup>1</sup>

On May 26, 2009 appellant, then a 61-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained a back injury due to factors of his federal employment, including those that required lifting/pulling, walking, standing, bending/twisting, and stooping. OWCP accepted appellant's claim for aggravation of degeneration of lumbar or lumbosacral intervertebral disc, and right thoracic or lumbosacral neuritis or radiculitis. It paid him wage-loss compensation on the supplemental rolls commencing April 24, 2010, and on the periodic rolls commencing May 9, 2010.

In a June 7, 2013 letter, the Office of Personnel Management (OPM) advised OWCP that appellant, as a compensationner, was eligible to continue coverage under the Federal Employees'

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<sup>1</sup> The Board notes that, following the March 18, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

Group Life Insurance (FEGLI) Program. It further notified OWCP that he had elected BLI; OLI Option A; OLI Option B times five multiples; and OLI Option C times one multiple. OPM noted that the BLI and OLI coverage premiums began on the “OWCP commencing date.” It further noted that the PRBLI election was 75 percent reduction and the commencing date for PRBLI premium deductions was April 23, 2011. OPM reported that appellant’s final base salary on which FEGLI deductions were based was \$53,049.00.

In a November 20, 2013 letter, OPM again advised OWCP that appellant, as a compensationner, was eligible to continue coverage under the FEGLI Program. It further notified OWCP, however, that he had elected BLI; OLI Option A; OLI Option B with three no reduction multiples and two full reduction multiples; and OLI Option C with one no reduction multiple. OPM noted that the BLI and OLI coverage premiums began on the “OWCP commencing date.” It further noted that the PRBLI election was no reduction and the commencing date for PRBLI premium deductions was April 23, 2011. OPM reported that appellant’s final base salary on which FEGLI deductions were based was \$53,049.00.

On August 26, 2019, OWCP issued a preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$23,823.59 for the period April 23, 2011 through July 20, 2019 because it had not made proper deductions for OLI and PRBLI. 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 payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, 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 precoupment hearing.

Appellant subsequently disputed the fact and amount of the overpayment and requested waiver of recovery. He requested a precoupment hearing, which was held on January 15, 2020.

By decision dated March 27, 2020, the hearing representative set aside the August 26, 2019 preliminary overpayment determination, finding that there was no documentation of record signed by appellant, such as an election form, confirming that he had elected the life insurance coverages noted on OPM’s June 7 and November 20, 2013 letters. The hearing representative remanded the case for OWCP to obtain evidence from OPM of the executed election form completed by appellant followed by a *de novo* preliminary overpayment determination.

On April 6, 2020, OWCP referenced only OPM’s November 20, 2013 letter and informed OPM that it did not have a signed election form from appellant notifying them whether he had in fact elected to continue his FEGLI coverage. It noted that the hearing representative had directed OWCP to obtain an election form signed by appellant notifying them of “whether or not he decided to have his FEGLI coverage continue post retirement and, if so, the effective date of the election.”

On July 2, 2020, OWCP received a Continuation of Life Insurance Coverage As an Annuitant or Compensationner form (Standard Form (SF) 2818), signed by appellant on November 14, 2012 in which he elected to receive BLI with no reduction; OLI Option A; OLI

Option B with three no reduction multiples and two full reduction multiples; and OLI Option C with one no reduction multiple and no full reduction multiples. No effective date was noted on the form.

By letter December 10, 2020, OPM informed OWCP that appellant had requested that it cancel all FEGLI coverage, effective July 1, 2020.

By notice dated February 12, 2021, OWCP advised appellant of its preliminary overpayment determination that he had received an overpayment of compensation in the amount of \$24,738.14 because BLI, OLI, and PRBLI premiums had not been properly deducted from his wage-loss compensation benefits payments for the period April 24, 2010 through June 30, 2020. It provided a calculation of the overpayment, noting that he was without fault in its creation.<sup>2</sup> OWCP requested that appellant submit a completed Form OWCP-20 to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, 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. No response was received.

By decision dated March 18, 2021, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$24,738.14 for the period April 24, 2010 through June 30, 2020, for which he was without fault. It noted that he had not submitted the requested financial information to justify waiver of recovery of the overpayment. OWCP required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

The Board, having duly considered this matter, finds that OWCP failed to meet its burden of proof to establish that appellant received an overpayment of compensation in the amount of \$24,738.14 for the period April 24, 2010 through June 30, 2020.

The case record contains an SF 2818, signed by appellant on November 14, 2012 in which he elected to receive BLI with no reduction; OLI Option A; OLI Option B with three no reduction

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<sup>2</sup> OWCP provided payment records showing the amount of life insurance premiums deducted between April 24, 2010 and June 30, 2020. It indicated that, for the period April 24, 2010 through April 22, 2011, \$4,572.10 in BLI and OLI premiums were deducted from appellant's benefits, but that the BLI and OLI premiums that should have been deducted for this period totaled \$4,654.00, resulting in a \$81.90 overpayment. For the period April 23, 2011 through June 29, 2013, \$9,571.15 in BLI and OLI premiums were deducted from his benefits, but the BLI, OLI, and PRBLI premiums that should have been deducted for this period totaled \$12,795.53, resulting in a \$3,224.38 overpayment. For the period June 30 through November 16, 2013, \$1,705.40 in OLI premiums were deducted from appellant's benefits, but the OLI and PRBLI premiums that should have been deducted for this period totaled \$2,206.82, resulting in a \$501.42 overpayment. For the period January 10, 2016 through July 20, 2019, \$5,068.74 in PRBLI premiums were deducted from his benefits, but the OLI and PRBLI premiums that should have been deducted for this period totaled \$25,135.81, resulting in a \$20,067.67 overpayment. For the period May 24 through June 30, 2020, no life insurance premiums were deducted from appellant's benefits, but the OLI and PRBLI premiums that should have been deducted for this period totaled \$863.37, resulting in a \$863.37 overpayment. The total of these deduction shortages is \$24,738.14

multiples and two full reduction multiples; and OLI Option C with one no reduction multiple and no full reduction multiples. However, no effective date is noted on the form.

The Board has held that OWCP must document whether and when a claimant elected life insurance coverage after separation from federal service or retirement.<sup>3</sup> The Board has further held that OWCP must document when a claimant elected life insurance coverage after separation from federal service or retirement in order to establish the fact of overpayment of compensation.<sup>4</sup> While the case record contains an election form signed on November 14, 2012, the form does not note the effective date of the election.<sup>5</sup> Therefore, as OWCP has not fully established appellant's election of OLI, BLI, and/or PRBLI, the Board finds it has not met its burden of proof to establish that a \$24,738.14 overpayment was created for the period April 24, 2010 through June 30, 2020.

**IT IS HEREBY ORDERED THAT** the March 18, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 6, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>3</sup> See *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); *N.J.*, Docket No. 13-2164 (issued April 18, 2014).

<sup>4</sup> See *S.B.*, Docket No. 20-1496 (issued July 14, 2021).

<sup>5</sup> *Id.*