

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

O.L., Appellant)	
)	
and)	Docket No. 23-0316
)	Issued: September 15, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, U.S. PENITENTIARY)	
ATLANTA, Atlanta, GA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 28, 2022 appellant filed a timely appeal from a July 13, 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 the employee received an overpayment of compensation in the amount of \$10,615.83 for the period September 1, 1996 through August 20, 2021, for which he was without fault, because postretirement basic life insurance (PRBLI) premiums were not properly deducted from his FECA wage-loss compensation; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 2, 1977 the employee, then a 36-year-old garage foreman, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 1977 he was injured due to an explosion that occurred while in the performance of duty. OWCP accepted his claim for first degree facial burns, binaural hearing loss, and post-traumatic stress disorder. It paid the employee wage-loss compensation and medical benefits for his accepted conditions.

On August 30, 2021 appellant informed OWCP that the employee, her father, had passed away on August 20, 2021.

On October 14, 2021 the Office of Personnel Management (OPM) advised OWCP that, as of September 1, 1996, the employee had elected standard optional and family optional basic life insurance (BLI), with PRBLI at 50 (percent) reduction. The record includes October 8, 2021 correspondence from OPM requesting that OWCP make the necessary adjustment as no PRBLI premiums had been deducted.

On April 13, 2022 OWCP calculated the amount of the employee's life insurance premiums that should have been deducted for the period September 1, 1996 through August 20, 2021. It provided the employee's compensation payment history for the same period.

In a preliminary overpayment determination dated April 14, 2022, OWCP notified appellant as the representative for the employee's estate, that the employee had received an overpayment of compensation in the amount of \$10,615.83 for the period September 1, 1996 through August 20, 2021, for which the employee was without fault, because premiums for PRBLI were not properly deducted from his FECA wage-loss compensation. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair recovery method and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support the reported income and expenses. OWCP also provided an overpayment action request form and indicated that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In response, appellant submitted a completed Form CA-20, signed on June 20, 2022 requesting that OWCP decide the case based on the written record. She indicated that the employee's estate had no income, assets, or expenses.

In a June 1, 2022 debt processing memorandum, OWCP noted that its National Office had received the case on May 27, 2022 and had referred it to the U.S. Department of the Treasury on May 31, 2022. No response was received.

² *James Lewis*, 35 ECAB 627 (1984).

By decision dated July 13, 2022, OWCP finalized the preliminary overpayment determination, finding that the employee had received an overpayment of compensation in the amount of \$10,615.83 for the period September 1, 1996 through August 20, 2021, because premiums for PRBLI were not properly deducted from his FECA wage-loss compensation. It found that the employee was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment and required the \$10,615.83 overpayment be repaid in full.

LEGAL PRECEDENT

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.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 Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the optional coverages.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, separation from the employing establishment, or placement on the periodic 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.⁸

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provides that an employee receiving compensation under FECA may elect continuous withholdings from his or her compensation, so that his or her life insurance coverage may be continued without reduction. OWCP's regulations at 5 C.F.R. § 870.701 (December 5, 1980) provide 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 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

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).⁹

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 remained in effect.¹⁰ An employee who does not file a life insurance election form with his or her employment agency, 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.¹¹

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.¹²

OWCP's procedures for recovery from a deceased debtor's estate provide that, if the claimant recently passed away, it should take prompt action because creditors who have not properly asserted a claim before the estate is closed are generally precluded from any recovery.¹³

Thus, OWCP should refer the debt to the Financial Management System (FMS) for offset of the deceased claimant's last federal tax refund under the Treasury's Offset Program (TOP).¹⁴ It has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,¹⁵ including sending the complete referral package to the National Office for final review and forwarding to the FMS.¹⁶ FMS personnel will then confirm whether referral to the Department of the Treasury is appropriate.¹⁷

⁹ See *R.B., (J.B.)*, Docket No. 19-0700 (issued March 16, 2021); *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

¹⁰ 20 C.F.R. § 870.504(a)(1).

¹¹ *Id.* at § 870.504(b).

¹² *Id.* at § 8707(d); see also *D.R., (G.R.)*, Docket No. 19-1675 (issued October 8, 2020); *R.B., (J.B.)*, and *D.H.*, *supra* note 9.

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.500.15 (September 2020).

¹⁴ 31 C.F.R. § 285.2; *id.* at Chapter 6.500.15e (September 2020). See also *D.J. (L.J.)*, Docket No. 22-0012 (issued August 18, 2022); *C.M. (M.C.)*, Docket No. 21-0059 (issued February 23, 2022); *D.U. (G.U.)*, Docket No. 20-0594 (issued June 4, 2021); *R.B. (J.B.)*, *supra* note 9; *W.J. (E.J.)*; *Order Remanding Case*, Docket No. 18-1035 (issued July 9, 2019).

¹⁵ *Id.* at Chapter 6.500.12 (September 2020).

¹⁶ *Id.* at Chapter 6.500.15e.

¹⁷ *Id.* at Chapter 6.500.12e(1) (September 2020).

OWCP's procedures note that the Department of the Treasury may return a debt to OWCP for a number of reasons, including that it had "been paid in full, found to be uncollectable, covered by a bankruptcy filing, or compromise may have been reached."¹⁸

ANALYSIS

The Board finds that this case is not in posture for decision.

In a preliminary overpayment determination dated April 14, 2022, OWCP notified the employee's estate, of its preliminary finding that the employee had received an overpayment of compensation in the amount of \$10,615.83 for the period September 1, 1996 through August 20, 2021 because premiums for PRBLI were not properly deducted from his FECA wage-loss compensation.

OWCP's procedures provide for recovery from a deceased debtor's estate.¹⁹ The procedures specifically require that, if the claimant recently passed away, OWCP should refer the debt to the FMS for offset of the deceased claimant's last federal tax refund under the TOP.²⁰ OWCP has a special profile with FMS under TOP for the collection of these specific estate debts. The claims examiner should follow the referral procedures set forth in Chapter 6.500.12,²¹ including sending the complete referral package to OWCP's National Office for final review and forwarding to the FMS.²² The FMS will then confirm whether referral to the TOP is appropriate.²³

The evidence of record indicates that OWCP referred the debt to FMS for appropriate offset under the TOP prior to issuing the final overpayment decision against the employee's estate. However, there is no indication that the Department of the Treasury had formally returned the case to OWCP, or if so, the reason for such return.²⁴ The case shall therefore be remanded to OWCP to follow all of its procedures as outlined in Chapter 6.500.15 of its procedure manual. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁸ *Id.* at Chapter 6.500.12f (September 2020).

¹⁹ *Supra* notes 13 through 17.

²⁰ *Supra* note 14.

²¹ *Supra* note 15.

²² *Supra* note 16.

²³ *Supra* note 17.

²⁴ *Supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 15, 2023
Washington, DC

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

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

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